

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

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the Federal Circuit and the United
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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

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(T.D. 84-213)

Customs Bond Structure; Revision

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to revise the Customs bond structure by consolidating and reducing the number of bond forms in use. The purpose of the revision is to simplify transactions between Customs and the importing public and to facilitate establishment of an efficient computerized bond control system.

EFFECTIVE DATE: This rule is effective on February 18, 1985. The Customs bond forms and bond riders listed in Appendix A are abolished on February 18, 1985.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Joseph C. Goody, Regulatory Audit Division (202-566-2812). Legal Aspects: William Rosoff, Carriers, Drawback and Bonds Division (202-566-5856). Legal and Operational Aspects Relating to Delinquent Sureties: Ron Gerdes, Office of Chief Counsel (202-566-2482). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

When merchandise other than noncommercial merchandise accompanying a traveler arrives in the United States, it ordinarily remains in Customs custody until the importer, consignee, or the authorized agent of either establishes ownership and complies with the applicable Customs laws and regulations or laws and regulations enforced by Customs for other Federal and state agencies. In

some instances, especially in the case of duty-free noncommercial importations, the merchandise may be released to the importer, consignee, or an authorized agent merely upon furnishing proof of ownership, and no formal documentation is required. However, in most cases involving commercial importations, formal documentation is required to obtain release of the merchandise. The Customs transaction releasing the merchandise to the importer is referred to as an "entry".

As a part of the entry documentation the importer, consignee, or an authorized agent usually is required to file a bond with Customs. The bond, among other things, guarantees that proper entry summary with payment of estimated duties and taxes when due, will be made for imported merchandise and that any additional duties and taxes subsequently found to be due will be paid. The bond also guarantees redelivery of imported merchandise to Customs custody if found not to comply with applicable laws and regulations. Redelivery may be required as a result of a failure to properly mark, label, clean, or fumigate the imported merchandise; or a failure to destroy or export the imported merchandise, if appropriate.

A bond also may provide, as a condition of its satisfaction, for the production of any missing invoices, declarations, certificates, or other documents required in connection with the entry of imported merchandise, in the form and within the time limits required by regulations.

Bonds are used to secure other Customs transactions besides those of importers. For example, carriage of imported merchandise that has not been examined or appraised by Customs must be secured by a bond to guarantee performance of various obligations to Customs. Those performance bonds are required from bonded carriers, bonded cartage and lighterage operators, and persons who are authorized to carry merchandise when bonded carrier facilities are not reasonably available. Among other things, those persons are contractually bound to safely deliver that merchandise to Customs at the destination. They are also bound to report arrival of the merchandise to Customs at the destination so that it can be examined for Customs purposes. Further, they are bound not to deliver that merchandise to the ultimate consignee until Customs determines that it can be released. If the bond principal fails to perform as agreed, the principal and surety become liable to Customs for payment of liquidated damages.

A similar situation exists for operators of Customs bonded warehouses, container stations, and foreign-trade zones. A bond is needed to protect the Government from any loss as a result of their operation. Generally, imported merchandise is placed in such places before the amount of duty has been determined. Moreover, until that merchandise is withdrawn for consumption no duty is paid by the importer. The bond given by the operators serves as a

guarantee that the stored merchandise will be kept safely and that it will be released only when authorized by Customs.

Other bonds are required in special instances. For example, persons who use the accelerated drawback program are required to file a bond to guarantee repayment of any money paid in excess of what is finally determined to be due. Another special bond is that required of copyright owners who claim that an imported article infringes their copyright and request Customs to detain that article pending a final determination of the infringement claim. The bond insures that any damages caused to the importer by detention will be reimbursed.

Presently, there are approximately 50 different forms of Customs bonds and 16 bond riders in use (see Appendix A). Part 113, Customs Regulations (19 CFR Part 113), sets forth a description of the various bonds and the general requirements applicable to Customs bonds. It contains the general authority and powers of the Commissioner of Customs to require bonds, the classes of bonds, procedures for their approval and execution, general and special bond requirements, requirements which must be met to be either a principal or a surety, requirements concerning the production of documents, and the authority and manner of assessing damages and of cancelling the bond or charges against a bond.

In an effort to (1) modernize the Customs bond structure by reducing and consolidating the number of bond forms in use, (2) modify the archaic bond language, (3) simplify transactions between Customs and the importing community, and (4) facilitate establishment of an efficient computerized bond control system, Customs published in Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register on May 26, 1981 (46 FR 28172), to afford the public a meaningful opportunity to participate at an early stage in the revision process by submitting comments on the merits of the proposal and by suggesting alternatives to the proposed bond format, coverages, and conversion approaches. Numerous comments were received in response to the ANPRM. The comments overwhelmingly supported the revision concept.

After a thorough review of the comments received and further refinement of the concept, on March 15, 1983, Customs published a notice of proposed rulemaking (NPRM) in the Federal Register (48 FR 11032). As with the ANPRM, numerous comments were received in response to the NPRM. Likewise, the commenters enthusiastically supported the revision concept. Following is a discussion of the comments received and changes made in the proposed rule as a result of the comments and Customs review of the proposal.

DISCUSSION OF COMMENTS

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Sections 4.30 (f) and (g), Customs Regulations (19 CFR 4.30 (f), (g)), provide that the district director may issue a term permit on Customs Form 3171 for any period up to 1 year, but not longer than the period of the supporting bond, to unlade merchandise, passengers, or baggage during official hours. The NPRM proposed to remove the time limitation relating to the period of the supporting bond. Based upon internal Customs review it has also been determined that since bonds will be either single entry or continuous there is no reason to retain the 1 year time limitation also contained in the section for continuous bonds. Accordingly, the language of sections 4.30 (f) and (g) has been modified to state that the term permit will remain in effect until revoked by the district director, terminated by the carrier or automatically cancelled by termination of the supporting continuous bond.

PART 113—CUSTOMS BONDS

1. Several commenters objected to the provisions of proposed section 113.12(a) relating to the single entry bond application. The commenters felt the application procedure would be burdensome, cause delays in the release of goods, cause storage charges to be incurred, would congest piers and cargo terminals, and was duplicative and inconsistent with the present procedures whereby importers can make application and file a bond in the same motion.

The commenters appear to have misread proposed section 113.12(a). The language is discretionary with the district director. The provisions of the section would only be used where adequate information is not provided by the importer. For example, it would not be used when the bond is filed with the entry summary or with the entry when the entry summary is filed at the time of entry. In these situations, the documentation provided is generally adequate to insure a proper determination as to bond sufficiency. When adequate information is not provided the district director must have the means of obtaining that information. However, to allay the fears of the importing public, the section has been modified to indicate that when a proper bond in sufficient amount is filed with the entry summary or with the entry when the entry summary is filed at the time of entry, an application will not be required.

Another commenter indicated that there is a need for Customs to improve the means of verifying that a bond is on file.

Customs is aware of the difficulties encountered in the current methods of bond verification. Improvement in this area is one of the benefits of the on-line bond system which will support this redesigned bond structure. Based upon the user functional requirements developed for this system, an on-line query by the user will provide the means to immediately verify that a bond is on file. In

addition, Customs offices responsible for the bonding functions will periodically produce computer printouts with local computer equipment listing all bonds on file.

Several commenters suggested that in addition to having bond information available by bond number, Customs should also provide access on an alphabetical basis as is the case with the ABIS (Automated Bond Information System) where bond information can be accessed either alphabetically from a printout or by importer number. One commenter recommended an on-line alphabetical cross index to the bond number be established which would be similar to the Automated Commercial System (ACS) project currently under development by Customs. Another commenter urged Customs to prepare an alphabetical listing regularly and frequently rather than periodically as stated in the NPRM.

Customs will, as stated in the NPRM (48 FR 11035, 11036), provide for an on-line query by Customs bond control number and periodically generate print-outs of bond information both in alphabetical order by principal name and by bond number in numerical sequence. These print-outs will serve as back-up to the computer system and as a manual query mechanism for Customs locations not having ready access to the on-line computer system. The decision to generate the print-outs periodically rather than regularly and frequently is based on the view that the turnover rate of bonds under the continuous bond concept implemented by this revision will be considerably less than the rate under the current term bond concept. Further, Customs expects the on-line query of the bond system to be the method most commonly used to obtain information regarding bonds.

With respect to the use of an on-line alphabetical cross index for the bond module, Customs is of the opinion that such a system would prove to be inefficient since if the query by principal name were not exactly the same as the name contained in the bond data file a no record response would be received. Trying to identify the exact spelling would result in multiple queries of the bond file and thus increase costs. However, as a part of the total ACS the capability already exists to do a partial key search on importer name. The user is able to "browse" through the file and find the correct importer name and then would be able to query the bond file.

2. Several individuals and organizations with differing concerns commented on proposed section 113.12(b) relating to the continuous bond application.

One commenter, a broker, in discussing the information requirements of proposed section 113.12(b)(1)(ii) indicated it would have difficulty in determining the amount of duties and taxes paid the previous year and estimating the amount that will be paid in the next year because its accounting methods do not differentiate between duties and taxes paid under its own bond and duties and

taxes paid under an importer's bond. The commenter believed Customs should provide this information to brokers.

Customs has in the past forbid use of a General Term Bond for Entry of Merchandise, Customs Form 7595, by a customhouse broker in its brokerage business. In the ANPRM Customs indicated that it would continue the policy of not allowing brokers to have a national type bond in their capacity as brokers. The policy which dated back to 1952 existed in part, because the amounts for General Term Bonds were based on 10-percent of the importer's prior year's duty payments. A broker, unlike an importer, can radically change its business by changing its clients. This could thus result in inadequate coverage during the current year. Another reason for not allowing brokers to have a national type bond was that a broker, unlike an importer, often lacks sufficient assets to go against in case of a loss. Since under the proposal set forth in the NPRM, Customs would be in a better position to monitor bond sufficiency, the basis for continuing the policy appeared to be unnecessary. Accordingly, Customs proposed to eliminate the prohibition against brokers having a national type bond in their capacity as brokers. The commenter's statements, however, give rise to concern in this area. Upon further reflection, Customs believes the commenter is probably not truly representative of all brokers. Accordingly, brokers will still be allowed to have a continuous bond. However, Customs will closely monitor the use of the continuous bond by brokers. Any broker who cannot comply with the requirements of section 113.12(b) will be denied a continuous bond. An accurate statement with respect to the information required by section 113.12(b) is necessary for the district director to set proper bond amounts. In view of the requirements set forth in Part 111, Customs Regulations (19 CFR Part 111), relating to recordkeeping, Customs does not believe there will be a problem for the vast majority of brokers in compiling this required data.

One commenter believed that the requirement for periodic updating of the bond information contained in proposed section 113.12(b)(2) and the independent periodic review by Customs officers in proposed section 113.13(c) is not frequent enough to ensure bond sufficiency. Since specific times at which this is to be done are not set forth, it is believed by the commenter that the review will not be done. It was also indicated that administrative sanctions are not available and import activity outside a district director's particular district is not known to the district director.

The requirement for periodic review of bond sufficiency is imposed upon Customs officers by proposed section 113.13(c). The frequency of the review can and will be established by internal broker directive rather than in the regulations. If an importer does not periodically review its bond sufficiency or update its application when changed events dictate a larger bond amount, the district director can always impose the requirement for additional security (see pro-

posed section 113.13(d)). The district director also has the option of requiring a single entry bond for a particular entry if it is believed that a continuous bond is inadequate. A district director need only exercise this option once and the importer should update its bond application. As far as the district director not having knowledge of import activity outside the district director's particular district, it is anticipated that the data processing system will contain data relating to all charges against each bond. Any district director will be able to access this information and obtain information on all bond charges wherever the charges may have occurred.

An association representing air cargo carriers indicated that the provisions of proposed section 113.12(b), relating to continuous bond applications, appear to be directed to importers and if air cargo carriers are required to comply with its provisions it would be a significant burden.

If air cargo carriers act as importers there is no reason to distinguish them from other importers of merchandise or to exempt them from the obligations placed on other importers.

3. One commenter noted that an applicant for a bond must provide a certification that the factual information contained in the application is true and accurate and asked by what means or how the certification should be made.

The provisions of proposed section 113.12(c) set forth what is required and how the certification will be accomplished. Specific certification language which must be included in the application is also set forth in this section.

4. Virtually every commenter expressed concern with the provisions of proposed section 113.13(b) relating to guidelines for determining the amount of the bond. While they did not object to the proposed language of the section, it was the general consensus that specific monetary amounts or a specific formula should be used to determine the bond amount.

Customs agrees that the criteria set forth in proposed section 113.13(b) should be supplemented with more objective guidelines. However, it is not believed that specific monetary amounts or a formula should be set forth in the regulations. Based upon the commenter's concerns Customs will formulate specific guidelines to be used in conjunction with those set forth in proposed section 113.13(b). These guidelines will be issued under the Customs Issuance System at least 45 days before the effective date of this document.

5. Customs received two other comments on proposed section 113.13(c), relating to periodic review of bond sufficiency, in addition to the comment discussed under proposed section 113.12(b)(2).

One commenter believed that Customs should notify the principal, surety, and the person who filed the bond if Customs determines the bond amount is inadequate.

Customs does not agree. The bond is security posted by the principal. Only the principal needs to be informed because it is the principal's contract. It is up to the principal to decide what to do (e.g. get a new bond with a different surety, file single entry bonds, etc.). In addition, Customs is not equipped to perform the principal's administrative tasks once the determination of inadequacy is made by Customs personnel.

The commenter also expressed concern about notification of bond insufficiency being directed to the wrong address.

If the principal places a complete address on the bond there will be no problem with timely notification at the proper address. Many problems experienced in the past in this area have been the result of incomplete or insufficient addresses on the bond forms.

Both commenters expressed concern with the 30-day time period set forth in proposed section 113.13(c) in which to remedy a bond deficiency and suggested a 60 or 90-day time period.

Because the bond is given to secure the principal's Customs transactions, immediate action must be taken to remedy inadequate bond coverage. It is believed any time greater than 30 days is excessive. Further, it is Customs responsibility to determine the amount of security it needs on a bond. This is not a function shared with bond obligors. It should be noted that in certain instances even 30 days may be excessive. Accordingly, Customs retains the right to, at any time, demand additional security (see section 113.13(d)).

6. One commenter asked that the use of abbreviations be authorized for names, addresses, etc., which appear on bonds because it would be awkward to attempt to "crowd" unabbreviated data onto the bond form.

One of the goals of the redesigned bond structure was to improve communications between Customs and principals and sureties with regard to bonding matters. A way to accomplish this is through the use of complete names and addresses on the bond form. If the use of abbreviations was authorized, Customs would have no effective way to control what abbreviations are used. As no standard can be devised in this regard, the use of any abbreviations would hamper our efforts to improve communications. Accordingly, the proposed Customs Bond, Customs Form 301, set forth in the NPRM as Appendix A, has been modified to provide more space for names and addresses thus eliminating the need for abbreviations (see Appendix B).

7. Several comments were received on various aspects of proposed section 113.24, relating to bond riders.

One commenter objected to the references to "unincorporated principal" and "unincorporated units of a principal" in proposed sections 113.24 (a)(4) and (c)(4). The commenter stated unincorporated units are not legal entities and a document submitted by them is without legal effect.

The commenter has completely misread proposed section 113.24. The term "unincorporated principal" is not used in either cited section. Further, proposed section 113.24(a)(4) specifically recognizes the fact that "unincorporated divisions of a corporate principal" do "not have a separate and distinct legal status". Finally, riders under section 113.24 will not be submitted in the name of an unincorporated division of a corporate principal. They will be submitted by the principal and under the provisions of proposed section 113.24(c) "shall be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements" of Part 113.

Another commenter notes that proposed sections 113.24 (a)(4) and (c)(4) authorizes the addition of a trade name but do not provide for removal of a trade name.

Customs can see no valid reason for not allowing a rider to be used to remove a trade name or an unincorporated division of a corporation. Accordingly, appropriate changes have been made to proposed sections 113.24 (a)(4) and (c)(4) to authorize use of a rider to remove a trade name or an unincorporated division of a corporation.

Another commenter asked whether or not unincorporated divisions of a corporate principal authorized to use the bond by the principal must sign the bond or bond rider.

Customs will not require signatures of these entities. No useful purpose would be served since only the bond obligors will be liable for breach of the bond.

One commenter felt that all riders contained in proposed section 113.24 could be listed on one form and the appropriate rider checked off.

This idea was explored and rejected during the development of the NPRM. Because the riders are not long, it was felt a separate Customs form was unnecessary. The individual riders can be quickly prepared by the principal and surety as needed. In addition while the language at the beginning of each rider is similar it is not the same and difficulty was encountered in trying to conform them so that a check off form could be used.

A commenter asked if strangers (unrelated persons) may join as co-principals on a bond.

There is no prohibition against two unrelated persons acting as co-principals on a bond. Conceptually this would be no different than having co-sureties, which is authorized by Customs under section 113.37(f).

Another commenter asked if an unincorporated division must be specifically listed on the bond in order to use it. If the answer is yes, the commenter wanted to know how the importer number should be listed when the unincorporated division chooses to use the parent corporation IRS number without an identifying suffix.

If the unincorporated division will use the bond in the name of the principal, there is no need for the unincorporated division to be listed in Section III of the bond. Unincorporated divisions must be listed along with their importer number if they will use the bond in their own name, as though they are a separate entity.

The use of a suffix (see section 24.5(d), Customs Regulations (19 CFR 24.5(d)) for explanation of suffix) is not relevant for Customs bonding purposes. It is relevant for billing purposes and for that reason will be required. When the unincorporated division attempts to use the parent's bond with the unincorporated division's own name and IRS number for a specific Customs transaction, Customs will verify the unincorporated division's right to use the bond by accessing the bond data file in the computer. The unincorporated division's IRS number will be cross-referenced to the bond of the parent corporation and Customs will be able to verify that the unincorporated division has been authorized to use the bond shown on the transaction document.

Based upon further Customs review it has been decided that the addition of a co-principal after execution of the bond is such a major change that it should not be accomplished by a rider but by the execution of a new bond. Accordingly, the provisions of proposed section 113.24 (a)(2) and (c)(2) have been deleted. The other provisions of this section have been renumbered to adjust for this deletion. A new section 113.34 relating to co-principals has been added to subpart D relating to principals and sureties. Proposed sections 113.31, 113.32, 113.33, and 113.34 have been redesignated as sections 113.30, 113.31, 113.32, and 113.33 respectively, to accommodate the new section.

8. One commenter objected to the inclusion of proposed section 113.25, relating to seals, in the regulation since "most" states have abolished the requirement for seals.

The provision is needed because all states have not abolished seals. Absent this requirement Customs would be required to check into each state's current requirement in this area. This is an undesirable administrative burden. In any event, unless the principal executes the bond in a state which requires seals or the corporate charter requires a seal, the provision is without regulatory effect. Customs bond approval officers need not review corporate charters to determine whether a seal is needed.

9. Proposed section 113.26 relates to termination of the bond and, in certain instances, provides for a 10-day delay in the date on which the termination becomes effective. One commenter asked whether there would be a "waiting period" before a new bond would be effective and whether it could be effective before the effective date.

Bonds and riders will be effective on the effective date listed on the bond or rider, provided the bond or rider is received at the bond desk in the district office by the effective date. Naturally,

some time has to be allotted to the administrative review of the documentation and to enter the bond or rider into the computer. Because this is an on-line system this time will be minimal. The delay to review the documentation and update Customs computer files should be no more than one business day. Thus, the bond or rider will be available for use after the close of business one business day following the day the bond or rider is reviewed at the district office, unless the principal is notified otherwise by Customs. In order to ensure timely availability, a bond rider may be prefiled up to 30 days before the effective date and entered into the computer. However, transactions against the bond or rider will be rejected before the effective date. The NPRM did not contain a provision relating to effective dates of bonds and riders. Accordingly, a new section 113.26 relating to effective dates has been added. Proposed section 113.26 relating to termination of bonds has been redesignated as section 113.27.

Another commenter stated that the automated system should identify the district in which the bond is terminated.

The user functional requirements developed for the on-line bond system which will support the redesigned bond structure provide for the identification of the district in which the bond was terminated.

Finally, one commenter suggested that if the principal cancels the bond, the principal or the district director, or both, should advise the surety of the cancellation.

While it would be prudent for the principal to notify the surety if it cancels the bond, we do not believe Customs should interfere in a matter which is between the principal and surety. Nor do we believe Customs should gratuitously assume this administrative burden. Because Customs will not accept transactions against a terminated bond the surety is not at risk. The only disadvantage it suffers is that its records are not current. In any event, the former principal's refusal to pay the next premium charge should effectively alert the surety of the cancellation.

10. Proposed section 113.32(b) relates to the same party as attorney in fact for both the principal and the surety. One commenter believes the section should be modified to require that both the principal and surety know of and assent to the dual relationship.

Customs does not believe it is necessary to incorporate this suggestion into the regulations. If a question arises in this area it can be handled as a part of the bond approval process without dealing with the matter in the regulations other than to show, as has been done in the past, that such a relationship is acceptable. The language of proposed section 113.32 has been substantially unchanged since the dual relationship was first authorized in 1898 (T.D. 19105, see also Article 1309, Customs Regulations, 1908; Article 1249, Customs Regulations, 1931; Article 1263, Customs Regulations, 1937).

11. Three commenters noted that on March 22, 1983, Customs published a notice of proposed rulemaking in the Federal Register (48 FR 11955) to modify section 141.38, Customs Regulations (19 CFR 141.38), to eliminate seals and the corporate certification on Customs powers of attorney. On April 25, 1984, the final rule on this matter was published in the Federal Register (49 FR 17753) as T.D. 84-93. The commenters suggested that proposed section 113.34(c) relating to bonds executed by an officer of a corporation, and proposed section 113.34(d), relating to bonds executed by an attorney in fact, be conformed with the March 22, 1983 proposal.

Customs agrees and has modified proposed section 113.34(c) and proposed section 113.34(d) (redesignated in the final rule as sections 113.33 (c) and (d)).

12. One commenter stated that proposed section 113.34(e), relating to subsidiaries as co-principals (redesignated in the final rule as section 113.33(e)) requires that they comply with all the provisions of the regulations relating to corporations, including the signing of the bond. The commenter noted that the proposed Customs Form 301, Customs Bond, does not have a place for the co-principal to sign.

Customs has modified the form to include a place for the co-principal's signature.

Another commenter asked if a subsidiary of a parent principal must be wholly owned in order to be named on a bond as co-principal or if a partially owned subsidiary may be made co-principal.

A partially owned subsidiary may be a co-principal.

The same commenter asked if two separate corporations owned by a common owner may be named as co-principals on the same bond.

Two separate corporations may be co-principals on the same bond and it makes no difference whether they have a common owner.

13. Several commenters raised matters concerning proposed section 113.38, relating to delinquent sureties, and proposed section 113.39, relating to procedures to remove a surety from Treasury Department Circular 570. Because the comments overlap they will be discussed together.

Several commenters believed the *Old Republic Insurance Company, et al. v. Pittman, et al.*, USCIT No. 81-7-00891, a court case arising out of the refusal of the District Director, Miami, to accept bonds from a particular surety, precludes Customs from promulgating regulations in this area.

This case was settled on August 22, 1983, and the settlement agreement specifically recognized Customs right to promulgate regulations authorizing Customs officers to refuse to accept surety bonds for reasons related to the performance of the surety companies.

Three commenters offered comments to the effect that either the total rights of the Secretary of the Treasury to discipline delinquent sureties are contained in Title 6, United States Code (Now, 31 U.S.C. 9301, *et seq.*) and 31 CFR Part 223 (Treasury Department Circular 570), or that the rights and remedies of the Treasury Department as contained in 31 CFR Part 223 were sufficient to negate the need for additional sanctions in proposed section 113.38. A review of these arguments and the relationship of 31 U.S.C. 9301 *et seq.* to section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623), has led Customs to the following conclusions:

A. The possession of a certificate of authority issued to a surety under the provisions of 31 CFR Part 223 is merely intended to allow corporations to be "accepted" as sureties. The certificate does not constitute the "approval" required from the head of a Department, etc., in 31 U.S.C. 9304 (former section 6 U.S.C. 6), nor does it give the corporation a *right* to do business with any agency of the Federal Government. Under section 1 of the Act of August 13, 1894 (Chapter 282, 53rd Congress, Sess. II, 28 Stat. 279; the predecessor statute to 6 U.S.C. 6 and 31 U.S.C. 9304), the certificate of authority granted by the Secretary of the Treasury merely authorized a corporation to be *approved* by the head of a department, court, judge, etc. It is clear that under the intent of this original statute (which is unchanged in the subsequent codification of that statute), any federal agency retains the authority to accept or reject a proffered surety performance bond regardless of the fact that the surety company has obtained a certificate of authority from the Secretary of the Treasury. See *Concord Casualty and Surety Company v. United States*, 69 F. 2d. 78 (1934).

B. Under 19 U.S.C. 1623, the Secretary of the Treasury has special authority, without regard to any general provision of law, to fix and to approve the sureties on Customs bonds and to prescribe the conditions of the bond.

C. By Treasury Department Order No. 165, revised, the Secretary of the Treasury delegated all of his rights, privileges, powers, and duties, under 19 U.S.C. 1623 to the Commissioner of Customs, with authority to redelegate.

D. The promulgation of regulations concerning surety certificates of authority in 31 CFR Part 223 was never intended to preempt the Secretary's (and therefore the Commissioner's) authority under 19 U.S.C. 1623.

The promulgation of regulations by this document constitutes formal delegation of certain rights and responsibilities heretofore vested in the Commissioner under Treasury Department Order No. 165, revised, to the named Customs field officers.

Several commenters questioned whether the proposed procedures afford the surety adequate due process prior to a decision to refuse to accept new bonds written by the surety.

We note that any decision made under section 113.38 will apply only to "new bonds" underwritten by the surety. Such a decision

will not put a surety "out of business" as suggested by the commenters for the simple reason that all previously approved bonds will still be accepted even in the district where a sanction is being imposed. Consequently, even a decision on a national level made by the Commissioner, will not put a surety out of business. The regulations are merely designed to allow an appropriate Customs officer to avoid new and burdensome contracts with surety companies who have not evidenced a willingness to abide by contracts made by them for the express benefit of the United States. Upon a review of the comments and the proposed regulation, Customs has determined that the proposed procedures providing for formal notice to the surety of the specifics concerning their alleged defective performance of obligations and providing the surety opportunity to respond to those specific allegations will provide "due process" to the surety under the Constitution of the United States and all applicable laws. While one commenter suggested that the 10-day period set forth in the sample letter to delinquent sureties (Appendix F, NPRM, 48 FR 11073) was insufficient time for a surety to respond, we note that this is 10 business days and that this is the minimum time which will be granted the surety by the appropriate Customs officer. Where a surety requires additional reasonable time due to circumstances beyond its control, it may, of course, request additional time to respond.

Finally, several commenters suggested that the decision to sanction a surety should not rest with a district director but at a minimum should be vested in the regional commissioner or his/her designee.

In the NPRM it was specified in the narrative that the district director will, under internal operating directives, be required to inform the appropriate regional commissioner and regional counsel of the proposed action before it is initiated (48 FR 11042.) Consequently, appropriate contact and coordination with regional Customs officers will be required. Further, it should be noted that section 113.38(c)(1) provides for requests for internal advice to the Director, Carriers, Drawback and Bonds Division, on any legal issues. The comments did bring to our attention that the proposed regulation did not provide for a level of sanction between that of the district director and the Commissioner. Consequently, the final rule includes a new section 113.38(c)(2) which will allow the regional commissioner to make the determination to reject bonds of a surety where the alleged delinquency extends beyond one district within the region.

For the purpose of clarification, it should be noted that the national sanction to be determined by the Commissioner may be taken for reasons including, but not limited to:

- A. The failure of a surety to adequately resolve disputes with district directors or regional commissioners where the Commissioner determines that the surety response to the district or re-

gional notices fails to provide adequate justification for the failure to meet obligations under the bond,

B. The payment record of the surety indicates a national problem requiring the Commissioner's attention, or

C. The sums owed by the surety are of such an amount as to raise doubts as to the surety's ability to meet its obligations.

14. One commenter stated that under the proposal Customs is not required to include a copy of the entry and related documents when sending a demand for payment to a surety. The commenter was of the opinion Customs should provide this information.

From the references in the comment, we believe the commenter is referring to the background portion of the NPRM (48 FR 11036) which stated that one commenter on the ANPRM suggested that the bond language include a requirement that Customs supply sureties with copies of appropriate bonds, entries and other documents in connection with claims or demands for payment. Customs response was that such language is not germane to a bond contract between a surety and principal. Accordingly, Customs does not believe it appropriate to include such a condition in the bond. Contrary to the commenter's statement, this language does not indicate that copies of entries and related documents will not be sent to a surety with a demand for payment. The surety is generally provided this information when a claim arises. It should be noted that the NPRM, Appendix F, contained a sample letter to delinquent sureties which indicated that "where you have not already received them we have enclosed copies of the originating documents (i.e., entry, request for reimbursable services, etc.) and applicable Customs bond numbers for bonds secured by you."

15. Two commenters noted that proposed section 113.41 discusses use of the Customs Form 5101 for missing documents. They stated that since the Customs Form 7501, presently being revised by Customs, will, among other things, result in elimination of the Customs Form 5101, the section should be revised to eliminate reference to the form.

The commenters are correct in stating that the revised Customs Form 7501 will result in elimination of the Customs Form 5101. On June 4, 1984, a final rule was published in the Federal Register (49 FR 23038) as T.D. 84-129 which revised the Customs Form 7501 and amended section 113.41. The amendments made to that section have been incorporated into this document. The Section has been further modified to eliminate the references to the Customs Forms 7551 and 7553.

16. Several comments were received which concerned the provisions of proposed section 113.62, relating to the basic importation and entry bond conditions.

One commenter suggested that a set of bond conditions be included in the regulations and an activity code be included on the bond to cover both dumping and countervailing duties.

Customs does not have any authority with respect to dumping and countervailing duties. This authority is vested in the Secretary of Commerce. Customs bonds are used to cover those duties because the Secretary of Commerce has so authorized. Accordingly, it is not within Customs authority to establish separate activity codes on the bond or a separate set of bond conditions to cover those duties. However, the proposed basic importation and entry bond conditions are broad enough in scope to cover the imposition of dumping and countervailing duties when imposed by the Secretary of Commerce. If dumping or countervailing duties are imposed and the district director believes the current bond is in an amount insufficient to cover potential liability, additional security may be demanded or single entry bonds required which contain the basic importation and entry bond conditions.

Another commenter suggest that the detailed language of bond rider B (T.D. 73-198), relating to deferred payment of internal revenue taxes, be incorporated into the basic importations and entry bond conditions set forth in proposed section 113.62.

The basic importation and entry bond conditions set forth in proposed section 113.62 and all the other bond conditions in proposed subpart G, Part 113, were intentionally drafted in broad terms to emphasize that the bond conditions merely secure obligations imposed by regulations or law. Most current Customs bonds, in addition to containing obligations for failure to comply with the law and regulations, impose additional obligations under the bond contract which are not found in the regulations. It was Customs intent to eliminate these additional contract obligations when the bond conditions were redrafted and incorporate them into the regulations. Accordingly, we have not adopted the commenter's suggestion.

However, based upon internal Customs review, it has been determined that several conditions contained in the warehouse proprietor's bonds set forth in T.D. 82-204, published in the Federal Register on November 1, 1982 (47 FR 49355), do not have counterpart provisions in the regulations. Because the basic custodial bond conditions set forth in section 113.63 do not contain these provisions for the reasons set forth above, it was necessary to modify sections 19.11(d); 19.12(a), (1), (3), (4) and (5); 19.12(b)(6); 19.13(g); 19.14(e); 19.15(j); 19.17(f); and 19.21(b) (19 CFR 19.11(d); 19.12(a), (1), (3), (4), (5); 19.12(b)(6); 19.13(g); 19.14(e); 19.15(j); 19.17(f); 19.21(b)) and add new sections 19.13a and 19.13(h) to incorporate the language of the eliminated bond conditions.

Another commenter suggested that the bond conditions in proposed subpart G be amended to include a requirement for interest so they will be compatible with the Customs proposal published in the Federal Register on March 10, 1983 (48 FR 10077), relating to interest on delinquent accounts.

As indicated in the previous comment, the bond language is intentionally drafted very broadly. It is Customs belief that, if we proceed to a final rule on the proposal to charge interest on delinquent accounts and incorporate a substantive requirement to that effect into the regulations, the bond conditions set forth in subpart G, Part 113, are sufficiently broad to cover interest charges without further amendment.

A surety company pointed out that by including the bond conditions in the regulations, any change in their terms would be subject to notice and public comment and if the change is ultimately adopted it would be prospective in nature.

Customs agrees. However, because of the broad wording of the conditions it is not anticipated that changes will be necessary.

The same commenter objects to the inclusion of the clause in each of the bond conditions relating to exoneration of the United States and its officers from any risk, loss or expense arising out of a particular transaction. The commenter finds it "peculiar" and indicates such a clause "has no place in a bond contract."

This particular condition is included in most current Customs bonds. The surety industry, including the commenter, has for many years been underwriting this risk without objection.

Another surety organization indicated that, while they believed the bond revision to be desirable, their ability to manage the risk within the various categories of activity will be affected.

Customs recognizes that there will be some impact on risk management. As the commenter stated, a principal will be able to use the bond at any port for the full range of activities covered by the particular set of bond conditions, if it has the required licenses and permits. However, Customs does not believe the increased risk will be significant. Further, the surety will know if increased activity is taking place by an expansion of business because this increased activity will require a larger bond. The bond amount the surety will write for a principal is the primary control over risk.

17. Proposed section 113.63 contains the basic custodial bond conditions. One commenter stated that the section does not contain conditions relevant to the issuance of temporary identification cards to a cartman's employees.

The temporary identification card regulation for cartman's employees is found in section 112.49, Customs Regulations (19 CFR 112.49). A bond is required under paragraph (d) of that section. Two basic conditions in addition to the liquidated damages clause are found in the bond. The first is a condition requiring return of the card to Customs upon demand by Customs or upon the issuance of a permanent card. The second condition is a hold harmless and exoneration clause. The bond conditions set forth in paragraph (d), section 112.49, are removed by this document. However, the exoneration and hold harmless clause has been incorporated into paragraph (f), the reimbursement and exoneration of the United States

clause of the basic custodial bond conditions set forth in proposed section 113.63. The other eliminated bond provision is found in paragraph (e) of the basic custodial bond condition which relates to compliance with licensing and operation requirements. That paragraph states that the principal agrees to comply with all Customs laws and regulations relating to the principals facilities, conveyances, and employees. There is a regulatory requirement found in paragraph (b), section 112.49 which requires that the holder of the temporary identification card or the cartman return the card to the district director when the permanent card is issued or the privileges granted by the issuance of the temporary card are withdrawn. Accordingly, if the cartman does not comply with this requirement found in section 112.49, he is in violation of condition (e) of the basic custodial bond conditions and may be assessed liquidated damages. However, there is a need for a clause in the basic custodial bond to fix the consequences for failure to return the card. Accordingly, clause (g) of the basic bond conditions has been modified in the final rule to include such a provision (see section 113.63(g)(3)). A review of the other bond conditions found in Subpart G, Part 113, has revealed that provision has not been made for liquidated damages for breach of bond conditions not relating to merchandise. The proposed consequences of default provision establishes the claim for liquidated damages as a multiple of the value of the merchandise involved in the default. Accordingly, a condition has been included in sections 113.62(i)(3), 113.66(c)(3), 113.67(b)(2) and 113.73(a)(2) to cover these other situations. Whether the default involved merchandise is determined solely by Customs.

Another commenter notes that the basic custodial bond conditions in section 113.63 include all custodial activities. The commenter asks whether a separate bond is required to support warehouse and cartage activities by the same party.

A separate bond is not required.

One commenter, in discussing the provisions of proposed section 113.63(d) relating to redelivery of merchandise to Customs, stated that since the carrier has the responsibility of redelivery to Customs under proposed section 4.38(a), it appears that proposed section 113.63(d) is superfluous.

Customs does not agree. The regulatory requirement is established by proposed section 4.38(A). The bond obligation is created by proposed section 113.63(d) and the consequences of default are fixed by proposed section 113.63(g). All three elements are necessary ingredients of the bonding scheme.

18. Customs review of proposed section 113.64(g), relating to the international carrier bond conditions, revealed several problems which necessitate changes to the provisions.

As proposed, section 113.64(a) states in part that, "If any vessel, vehicle, or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors agree to pay. . . ." However-

er, no provision is made for payment of a penalty, duty, tax or other charge incurred by the master, the owner, or the person in charge of the vessel, vehicle, or aircraft. Many statutes provide for penalties against one or more of those persons (e.g. 46 U.S.C. 91, 277, 289, 315, 316, and 883, and 19 U.S.C. 1453, 1454, and 1584).

Customs Form 7567, Vessel, Vehicle, or Aircraft Bond (Single Entry) and Customs Form 7569, Vessel, Vehicle, or Aircraft Bond (Term), two of the bonds being replaced by section 113.64, provide in condition (1) for the payment of "any duties, charges, exactions, penalties, or other sums found legally due the United States from any master or other proper officer or owner of said vessel, vehicle, or aircraft on account of said vessel, vehicle or aircraft." Customs omitted a similar provision in proposed section 113.64 when the provisions were drafted.

The payment of penalties, duties, taxes, and charges is one of the conditions imposed by 46 U.S.C. 91 which must be met prior to the issuance of a clearance to a vessel. One of the functions of the bond is to protect the Government from loss if a penalty is found to be due after a violator has exhausted his administrative appeals provided by 46 U.S.C. 7 or 19 U.S.C. 1618 and 1623(c) and the vessel is outside of the jurisdiction of the United States.

In light of the foregoing, proposed section 113.64(a) has been revised to read as follows:

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors agree to pay the sum upon demand by Customs.

Section 113.64(c), covering delivery of export documents, as proposed covers only vessels and vehicles. The requirement that aircraft file export documents is contained in 15 CFR 30.20(a) and 30.21(b) which were promulgated under the authority of 13 U.S.C. 302. Under 13 U.S.C. 304, the Secretary of Commerce has the authority to state that period within which documents may be filed. The provisions of 15 CFR 30.24 were issued under that authority and provide for penalties against aircraft identical to those against vessels and vehicles. Accordingly, proposed section 113.64(c) has been modified to include aircraft.

One commenter recommended that the word "international" be deleted from the title and text of proposed section 113.64. The commenter suggested that use of the word would seem to restrict the condition to "common" carriers and exclude private carriers.

The word "international" was used to distinguish those carriers who engage in transportation in international commerce from other types of carriers. The use of the word has no other connotation and would not bar a private carrier from use of a bond containing the international carrier bond conditions.

Another commenter stated that it appears from the proposed bond form that in order to obtain the bond coverage for instruments of international traffic which appear in proposed section 113.66 and on the bond as activity code, 3a, the principal must also obtain international carrier coverage which appears in proposed section 113.64 and on the bond as activity code 3. The commenter suggests that the instruments of international traffic provisions be an independent coverage.

The commenter apparently misread the instructions to section II of the Customs Form 301, Customs Bond, which state that activity code 3a, instruments of international traffic coverage, may be obtained independently or in conjunction with activity code 3, international carrier coverage. It should also be noted that activity code 1a, drawback payment refunds coverage, may be checked independently or in conjunction with activity code 1, importer or broker coverage.

There commenters voiced objection to the increased liability for liquidated damages under the proposed bond conditions. They noted that sections 10.31(f), 10.39(d) (3), and 18.8, Customs Regulations (19 CFR 10.31(f), 10.39(d) (3), 18.8), presently provide for lesser amounts and are in conflict with the proposed bond conditions.

In light of the comments, Customs is conducting a complete review of the various liquidated damages provisions currently found in the Customs Regulation. Upon completion of this review a notice of proposed rulemaking will be published in the Federal Register to provide the public an opportunity to comment on any proposal to modify the various liquidated damages provisions. In the meantime Customs has modified the consequences of default condition in proposed sections 113.62(i), 113.63(g), 113.66(c), 113.67(b), and 113.73 to indicate that if another amount is established by law or regulation (e.g. the amounts currently set forth in sections 10.31(f), 10.39(d) (3), 18.8, Customs Regulations) that amount shall govern the extent of liability for liquidated damages. In addition, the bond conditions found in sections 113.62(i), 113.63(g), 113.64(b), 113.67, and 113.73(a) of the final rule have been modified to indicate that liquidated damages will be in an amount equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages. Customs will issue instructions to the various district directors before the effective date of this final rule which defines the scope of the restricted merchandise to include merchandise subject to quota, visa restrictions, food and drug restrictions, EPA/DOT vehicle restrictions and similar restricted merchandise. Further, the various bond conditions have been modified to indicate that the quantity and value of merchandise involved in a default is determined by Customs and that value as used in the bond conditions is determined under the provisions of 19 U.S.C. 1401a.

Finally, section 113.68 relating to the wool and fur products labeling acts has been modified to include within its scope the provisions of the Fiber Products Identification Act (15 U.S.C. 70 *et seq.*).

Another commenter stated that historically the amount of liquidated damages under a term bond has been limited to the amount which would have applied under a single entry bond. The commenter believes this principle should be continued under the continuous bonds.

To the extent that the limitation of liability for liquidated damages is set forth in the regulations, the limitation will continue (see the previous comment in this respect). If a limitation is not set forth in the regulations (exclusive of the limitations set forth in the bond conditions contained in subpart G, Part 113) the consequences of default provisions of the bonds will govern. However, further restrictions on the ultimate amount of liquidated damages collected may be established at a later date by regulation amendments or through the use of mitigation guidelines.

19. Another commenter requested that Customs either retain the existing Air Carrier Blanket Bond, Customs Form 7605 (which incorporates by reference the conditions of the Carrier's Bond, Customs Form 3587, Vessel, Vehicle, or Aircraft Bond (Term), Customs Form 7569, Bond for the Control of Certain Instruments of International Traffic, Customs Form 7587, and the General Term Bond for Entry of Merchandise, Customs Form 7595) or establish another activity code for air carriers on the Customs Form 301, Customs Bond, which would encompass all of the transactions covered by the Air Carrier Blanket Bond. The commenter's reason for the request is concern that having separate bonds would increase the total amount of bond coverage and require the filing of several bonds. The commenter also objected to air carriers being required to file the bond applications under the provisions of proposed section 113.12.

After reviewing all the comments, Customs is of the opinion that the separate bond coverage for each activity should be retained and that a consolidation of activities for the benefit of one segment of the trade community is not warranted. Customs believes this is the most equitable approach and most beneficial to the trade community. It also serves to make air carriers, when they act as importers, aware of their responsibilities in this area. While it may be true that bond coverage will increase for some air carriers, Customs believes it will decrease for many. For those whose bond increases, Customs believes the increase will be warranted and that it will serve to highlight that under the present system Customs was not in a position to adequately check on bond sufficiency. This is a problem the redesigned bond system was intended to correct. Further, Customs is of the opinion that all persons engaged in the importation or entry of merchandise should be required to file a bond application under the provisions of proposed section 113.12(b). If

this were not the case, Customs would not be in a position to adequately determine the bond amount required to protect the revenue and ensure compliance with the laws and regulations.

PART 142—ENTRY PROCESS

One commenter notes that section 142.24, Customs Regulations (19 CFR 142.24), relating to term special permits provides for a one year term special permit for immediate delivery. The commenter states that, traditionally, application for the permit is made when the term bond is filed, and that the term of the permit and the bond are the same. The commenter opined that the special permit was limited to one year because the bond was so limited and suggested that under the new bond structure there is no need for a time limitation.

Customs agrees and has made appropriate conforming amendments.

DISCUSSION OF GENERAL COMMENTS

1. One commenter objected to not including the bond conditions on the bond form or at least as an attachment to the bond form. The commenter suggested that the regulations are not easily accessible to many persons engaged in the various Customs transactions and having the conditions is necessary to know the bond obligations and the consequences of failure to meet those obligations.

Customs disagrees with the commenter's underlying premise that persons engaged in Customs transactions do not have access to the regulations or know their requirements. Clearly, custodians of Customs bonded merchandise, international carriers, drawback claimants who want accelerated payment or to use summary export procedures, persons who use instruments of international traffic, licensed public gaugers and the other persons who use Customs bonds know what is required of them under the regulations. While many importers may not be familiar with bond obligations or regulations requirements, they are not filing the entry. They generally use a broker who is or should be familiar with bond obligations and the regulations. Importers who file entry in their own name are, we believe, generally familiar with what is required of them. Thus, while the commenter's suggestion has surface appeal, upon reflection it is not believed to be necessary to include the bond conditions on the bond form or as an attachment to the bond form.

In addition, it should be remembered that as a part of the redesigned bond structure it was Customs intention to broadly word the bond conditions to avoid the need to constantly amend the provisions. Without also knowing what are the specific requirements of the regulations, having the broadly worded bond conditions would not be of great benefit.

2. One commenter stated that to prevent undue hardship and excessive expense for the importer, a bond currently in effect should not be required to be renewed until it has expired.

We believe the commenter means that a bond should not be required in the new format until the anniversary date of the current bond since under the present bond structure some bonds never expire. Under the proposed system the continuous bond will remain in effect until terminated by one of the parties to the contract. In light of this and the transition method set forth in the NPRM, we fail to understand how there would be a hardship or excessive expenses. Only persons with multiple bonds of the type covered by the same Customs activity under the redesigned bond system would be faced with terminating one or more bonds early.

In the NPRM it was stated that, after considering all of the comments in response to the ANPRM, Customs had decided it would be best to phase in the new bond structure over a one year period beginning 60 days after publication of the final rule in the Federal Register. On the sixtieth day after publication, all new bonds, single entry and continuous, would be required to be on the new Customs Form 301 and contain the appropriate bond conditions set forth in proposed subpart G, Part 113. The NPRM further stated that all existing term, consolidated, and continuous bonds will be converted to the new system on their anniversary date. If a principal has more than one bond for the same type of activity (e.g., bonds which will, under the new system, be encompassed by the "Basic Importation and Entry Bond Conditions" contained in section 113.62) all will be converted to the new system on the anniversary date of the bond with the earliest anniversary date. The responsibility for identification of the bonds affected and their anniversary dates will be with the principals. Under the above approach all bonds will be converted within one year.

If the above conversion approach were not adopted, Customs would be in the position of demanding additional security from a person engaged in a particular activity each time the anniversary date of a bond of the same type of activity occurred. This would undoubtedly lead to greater confusion and expense than the conversion approach proposed and adopted in this document.

Several commenters objected to the proposal to make the new bond system effective 60 days after the final rule is published in the Federal Register. They indicated that not enough time was provided to print and distribute the new forms.

The vast majority of the commenters believed a 120 day delayed effective date was more appropriate. Customs agrees and has provided for a 120 day delayed effective date in this document but will adopt the conversion approach set forth in the NPRM as restated above.

3. One commenter objected to Customs issuing a "Courtesy Bond Renewal Notice".

The commenter apparently misread the NPRM discussion on this point. While a courtesy notice was proposed in the ANPRM, it was rejected in the NPRM based upon the comments received in response to the ANPRM and Customs review of the matter.

4. Another commenter indicated it would be helpful if the old and new bond forms were correlated and instructions issued explaining how the bond is to be completed for each transaction.

The old bond forms and, in some cases, specific conditions of the bond forms are correlated with the proposed bond conditions grouped by activity set forth in proposed subpart G, Part 113. This information was listed in Appendix B of the NPRM, and it is reproduced as Appendix C to this document.

With respect to the second part of the comment, the Customs Form 301 is completed the same way for every type of activity or transaction. There are short concise instructions at the beginning of each section of the form and explanatory notes at the end of the form. Customs does not believe any further explanation is necessary.

5. One commenter stated that in a data processing environment, forms requiring information on both front and reverse sides pose problems.

Customs recognized this as a potential problem in designing the new bond form and for that reason space was provided on the front of the form for all information required for bond control and data processing purposes. Only when an individual engaging in a Customs transaction lists numerous tradenames or unincorporated divisions permitted to use the bond is there a problem. If the space in section III of Customs Form 301 is insufficient, only then is it necessary for data processing purposes to go to the reverse of the form. Based upon Customs experience the number of principals who will have to use the continuation portion of section III on the reverse of the form will be minimal.

6. Another individual inquired whether a check in block 2, Section II, Customs Form 301, means that all of the activities shown under the conditions for "custodian of bonded merchandise" are covered by the one bond.

All activities are covered. However, it must be kept in mind that just because a bond principal has a bond covering all the activities, the principal has not necessarily been given the authority to transact the business of the other activities. As under existing regulations, such authority is conveyed only by the issuing by Customs of the appropriate permit, license, etc. after compliance with the appropriate regulatory provisions.

7. One commenter stated that under the existing bond structure large importers are able to divide their total bond liability among several sureties so that the total financial commitment for any one surety is not large in relation to the principal's financial condition. The commenter further indicated that both the warehouse bond

and the consumption entry bond are two of the bonds which frequently are split among several sureties. The recommendation was made that Customs, under the revised bond structure, permit more than one bond covering the same group of transactions (e.g. basic custodial bond conditions) to be filed by the same principal and secured by different sureties.

Two of the objectives of the redesigned bond structure were to reduce the excessive bond coverage burden on those persons conducting Customs business and to reduce the administrative burden and costs associated with controlling a multiplicity of bonds for both Customs and the trade community. Customs believes that if the type of situation suggested by the commenter were authorized it would negate the cost and burden savings this aspect of the restructured bond system was designed to realize. This restriction is no different than that which presently exists under the General Term Bond for Entry of Merchandise, Customs Form 7595. Further, as with the present bond structure, there is nothing to preclude a person from supplementing bond coverage with a single transaction bond when required. However, only one continuous bond will be authorized for a particular activity. In order to ensure that this is understood by all parties, a provision to this effect has been added to section 113.11.

8. Another commenter inquired as to what information is to be placed in the blocks labeled "Surety Agents" and "Identification No." which appear at the bottom of the proposed Customs Form 301, Customs Bond. The commenter suggested that this matter could be clarified by footnotes. The commenter also questioned the need for two blocks for this information.

The explanatory footnotes 5 and 6 on the back of the proposed Customs Form 301 discuss these two data blocks. (These footnotes appear as 8 and 9, respectively, in the final Customs Form 301, Appendix B). Through inadvertence the footnote numbers were not placed on the front of the form next to the blocks. This has been corrected in the final rule. With respect to the commenter's second comment, two blocks were included on the form for the surety agent's name and identification number to accommodate co-sureties represented by different agents.

9. Several commenters were of the opinion that Customs was proposing to discontinue the use of IRS employer identification numbers. They expressed strong disapproval of this action.

Customs did not propose to discontinue the use of the IRS employer identification numbers (known for Customs purposes as IRS numbers or importer numbers). The IRS number is a critical data element in other Customs automated systems, in addition to the bond system. The IRS number will be one of the key data elements used to interface the bond system with these other systems.

Customs Form 301, requires an importer number, to be placed by the principal in the "Importer No., Signature" block located on the

bottom and front of the form. Explanatory footnote 2 on the back of the bond form (footnote 3 in the final Customs Form 301, Appendix B) states that the importer number is the Customs identification number filed pursuant to section 24.5, Customs Regulations (19 CFR 24.5). Section 24.5 sets forth three numbers that may be used by a person, business or firm that intends to transact Customs business. These numbers include the IRS number, the Social Security Number, or a Customs assigned number. These numbers, also referred to as importer numbers, will provide Customs with the means of identifying a bond principal.

10. Another commenter recommended that more space be provided on the Customs Bond, Customs Form 301, for inserting the limit of liability.

Sufficient space has been included to accommodate \$999 million in coverage including space for all the commas. Customs believes that amount of space is sufficient to accommodate the needs of a person engaging in any of the various Customs transactions covered by the bond.

11. Two comments raised a question regarding the Customs broker's bond liability as a result of a provisional release procedure in use along the United States-Canadian border. Under this procedure a broker obtains release of merchandise in its own name as importer or allows its name to be listed by another on the release documentation as the importer. As a result Customs has ruled that the broker's bond obligation remains unsatisfied unless estimated duties are deposited with the entry documentation. The commenters proposed that Customs authorize a procedure to allow the broker to transfer liability from the broker's bond to the actual owner's bond, or if the actual owner does not have a bond that the broker obtain a single entry bond in the actual owners name.

The pivotal issue is whether 19 U.S.C. 1505(a) prohibits the transfer of the importer of record's liabilities prior to the filing of the entry summary. Section 1505(a) allows the Secretary of the Treasury to prescribe the time for depositing estimated duties by regulation. This has been set at 10 days after release in sections 141.101(a), 142.12(c), and 142.33, Customs Regulations (19 CFR 141.101(a), 142.12(c), 142.33). Amendments made by Public Law 97-446 to the entry statutes have not affected section 1505(a). Customs is therefore of the opinion that the transfer of the liability to deposit estimated duties is not proscribed by statute.

This matter has been the subject of a test initiated in Blaine, Washington, on October 3, 1983. The test procedure permits a broker to obtain release of goods using the broker's bond. After release a broker may file a modified Declaration of Actual Owner, Customs Form 3347, and charge the importer's bond or provide a single entry bond in the importer's name. At the conclusion of the test and after evaluation of the results, a decision will be made regarding whether to implement the procedure nationwide. If it is de-

cided to authorize the use of the procedure a notice of proposed rulemaking will be published in the Federal Register giving the public an opportunity to comment on the proposal. Accordingly, it would be premature to act on the commenter's suggestion at this time.

12. Several comments were generated with respect to bond filing procedures and bond numbering.

One commenter indicated that it files its bonds with Customs either by mail or hand delivery. The commenter suggested that after Customs approval, if the bond was mailed to Customs, the principal and surety copies of the bond be mailed to the respective parties or, if hand delivered to Customs, the approved bond could either be mailed to the principal and surety or both copies could be returned to the party that delivered the bond to Customs. Another commenter indicated that the surety copy of the bond should not be returned to the party who submitted it, but should be returned to the surety.

Customs has no problem with the use of any of the suggested procedures. However, because different parties prefer different ways of handling the matter, as is demonstrated by the comments, Customs does not believe this should be the subject of regulations. However, if the parties make their wishes known in this area when the bonds are filed, and the requests are reasonable, Customs will comply. The parties can make their wishes known by providing stamped, self-addressed envelopes at the time of filing. When stamped, self-addressed envelopes are not provided with the submission of the bond, copies of the approved bond will be returned to the party that submitted the bond to Customs.

One commenter requested that space be provided on the bond for the surety to place its bond number, or the surety be permitted to annotate the form with its bond number in the margin. Another commenter requested that Customs allow the surety to pre-number bonds with the first three digits as a surety code followed by a unique number.

Customs will not provide an information block on the form for the surety's bond number. However, Customs has no objection to the surety placing its number on the bond form, providing the placement of that number does not interfere with any of the information areas or blocks on the Customs bond. To insure that there will be no problems in this area, any surety wanting to pre-number the bond forms with their own number should send a letter to the Director, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, describing the placement of the surety bond number and requesting approval. While approval is not necessary, it will insure a bond is not rejected by Customs field personnel because of pre-numbering.

One commenter indicated that if the objective of the numerical bond control is to have a system whereby both the surety and Customs can expeditiously locate bonds in their respective files, a dual numbering system (i.e. Customs bond number and surety bond number) should be implemented. Under such a system, Customs computer would include a data file containing the surety bond numbers which would not exceed 20 spaces, either numerical or alpha-numerical including punctuation.

One of the alternatives considered by Customs for bond control during the initial stages of the development of the redesigned bond structure was a dual numbering system. This approach was rejected because of 1) the additional data storage required, 2) additional input requirements, and 3) the lack of a standard bond control system within the surety industry for bonds. This latter reason is a major obstacle for adoption of this approach. Without standardization there is no efficient way for the computer to edit and validate the surety bond numbers. Without such edits and validations, there is no assurance that the surety bond numbers entered into the system are correct. Customs has no control over the numbering schemes the sureties use. For a dual numbering control to be viable, Customs would have to develop and maintain computer edit and validation routines for each individual surety bond numbering system. This would be prohibitive. Accordingly, the suggestion cannot be adopted.

Another commenter objected to the bond numbering system, stating that an importer could have a different bond number for every port of entry, thereby significantly increasing the demands on the system. The commenter opined that Customs is already overloaded with numbers and that the importer number in conjunction with the surety code should provide an adequate method of identifying bonds.

The commenter apparently misread the NPRM. An importer will not have a bond for each port of entry. Only one bond which is valid nationwide for each activity will be authorized. The importer number in conjunction with the surety code, as stated in the NPRM (48 FR 11035, 11036), is not a unique number. If such a system were used, more than one bond could have the same number. For example, a person who is an importer of merchandise would be required to have a bond containing the basic importation and entry bond conditions (see section 113.62). If this same person was also a cartman a basic custodial bond would also be required (see section 113.63). By using the same surety both bonds would have the same numbers. If the person also engaged in other Customs activities or posted more than one single entry bond for the production of a bill of lading many bonds with the same number could exist. Accordingly, the commenter's suggestion cannot be adopted.

MISCELLANEOUS MATTERS

1. No comments were received relating to the proposed corporate surety power of attorney form, which was set forth as Appendix C to the NPRM (48 FR 11069, 11070). Further, Customs reiew has not revealed any need to modify the form from that proposal. Accordingly, the form, which is reprinted as Appendix D to this document, is adopted.

2. Under the provisions of section 22.20a, Customs Regulations (19 CFR 22.20a), which was redesignated as section 191.72(b) by T.D. 83-212 published in the Federal Register on October 14, 1983 (48 FR 46740), the regional commissioners have the authority to approve the Bond for Accelerated Payment of Drawback (Single Entry), Customs Form 7609, and Bond for Accelerated Payment of Drawback (Term), Customs Form 7611. While the NPRM proposed to substitute a reference to the Customs Form 301, containing the bond conditions set forth in section 113.65, relating to repayment of erroneous drawback payment, for the two Customs bonds, in section 22.20a, the authority of the regional commissioners to approve the bond was not recognized in proposed Part 113. Accordingly, section 113.13 has been modified to reflect this authority. Conforming amendments were also required to sections 113.15, 113.26, 113.32, 113.37, and 113.40. The NPRM proposed amendments to sections 22.7(d) (2), 22.20a, and 22.28(b), Customs Regulations (19 CFR 22.7(d) (2), 22.20a, 22.28(b)). These provisions, as a result of T.D. 83-212, now appear in sections 191.53(d), 191.72(b) and 191.133(b), Customs Regulations (19 CFR 191.53(d), 191.72(b), 191.133(b)). The substance of the conforming amendments to Part 22 in the NPRM has been incorporated into the above referenced Part 191 sections by this document.

3. One commenter suggested, as a means of ensuring that entries reflect correct and current bond information, that a section be added to the regulations permitting brokers access to all bond information in Customs files.

The provisions of the Freedom of Information Act (5 U.S.C. 552) and 18 U.S.C. 1905, limit the disclosure of confidential commercial information to third parties. While it would be permissible for Customs to provide brokers access to bond information relating to their own clients, under no circumstances would a broker be allowed unrestricted access to the entire bond file. There are presently insufficient administrative controls built into the system to ensure that commercial or financial information would not be released if brokers were given access to the system.

Any system developed to prevent improper disclosure must not burden Customs or the brokers using the system and be able to provide verification of the client-broker relationship. The problems in developing such a system involve other automated data processing areas outside of the revised bond structure. Accordingly, Customs has determined that the release of bond information should

be considered in the implementation effort of the more comprehensive Automated Commercial System (ACS) and not as a part of this document.

EXECUTIVE ORDER 12291

This regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C 603, 604), are applicable to this proposal. An initial regulatory flexibility analysis was prepared and included in the NPRM as Appendix D. A final regulatory flexibility analysis is attached to this document as Appendix E.

PAPERWORK REDUCTION ACT

The NPRM, Customs Bond (Customs Form 301), and Corporate Surety Power of Attorney (Customs Form 5297), were sent to the Office of Management and Budget (OMB) prior to publication. The OMB filed comments to the NPRM which expressed concern that small importing and brokerage firms could be adversely affected in comparison to large firms and requested to be advised of any public comments received relating to this issue. As indicated earlier in this document, numerous comments were received from both small and large entities. The comments, all of which were discussed in the "Discussion of Comments" portion of this document, overwhelmingly supported the revision concept. Changes made as a result of those comments were discussed and reasons were given for rejecting certain comments, as required by 44 U.S.C. 3504(h)(3). None of those comments, however, suggested that the proposed revised bond structure would adversely affect small importing and brokerage firms in comparison to large firms. On this basis, Customs, pursuant to 44 U.S.C. 3504(h)(3), has determined to reject the comments filed by OMB. The final rule has been submitted to OMB for review pursuant to 44 U.S.C. 3504(h)(5)(C).

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR

Parts 4, 6, 7, 10, 54, 114, 123, 127, 132, 133, 134, 141, 146, 191
Bonds, Customs duties and inspection, Exports, Imports.

Parts 11, 12, 24, 101, 112, 142, 144, 147, 151, 162

Bonds, Customs duties and inspection, Imports.

Parts 18, 19, 113, 125

Bonds, Customs duties and inspection, Exports, Imports, Surety bonds.

Part 145

Bonds, Customs duties and inspection, Imports, Warehouses.

Part 148

Airmen, Customs duties and inspection, Foreign officials, Government employees, Imports, International organizations, Seamen, Taxes.

Part 172

Bonds, Customs duties and inspection, Liquidated damages.

Part 174

Bonds, Customs duties and inspection, Imports, Protests.

AMENDMENTS TO THE REGULATIONS

Parts 4, 6, 7, 10, 11, 12, 18, 19, 24, 54, 101, 112, 113, 114, 123, 125, 127, 132, 133, 134, 141, 142, 144, 145, 146, 147, 148, 151, 162, 172, 174, and 191, Customs Regulations (19 CFR Parts 4, 6, 7, 10, 11, 12, 18, 19, 24, 54, 101, 112, 113, 114, 123, 125, 127, 132, 133, 134, 141, 142, 144, 145, 146, 147, 148, 151, 162, 172, 174, 191) are amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 17, 1984.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, October 19, 1984 (49 FR 41152)]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.10 is amended by removing the words "Customs Form 7567 or 7569" in the fourth sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter".

2. Section 4.13(b) is amended by removing the words "Customs Form 7593" and inserting, in their place, the words "Customs Form 301, containing the bond conditions relating to international carriers set forth in section 113.64 of this chapter in an amount equal to twice the potential duty liability".

3. Section 4.14(b)(1) is amended by removing the words "Customs Form 7567 or 7569" in the fourth sentence and inserting, in their

place, the words "Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter".

4. Section 4.16(a) is amended by removing the words "a bond on Customs Form 7567 in such penal sum as the district director of Customs deems sufficient but not less than \$1000, or the usual term bond on Customs Form 7569" and inserting, in their place, the words "a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in section 113.64 of this chapter, in such amount as the district director deems appropriate but not less than \$1000".

5. Section 4.30(c) is amended by removing the words "bond,⁶² on Customs Form 7567 or 7569, has been received" in the first sentence and inserting, in their place, the words "bond has been filed on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers⁶²".

6. Section 4.30(c) is further amended by removing the words "Customs Form 3587" in the second sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter relating to basis custodial bond conditions".

7. Section 4.30 (f) and (g) are amended by removing the words "for any period up to 1 year, but not longer than the period of the supporting bond," and inserting, in their place, the words", which will remain in effect until revoked by the district director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond,".

8. Section 4.30(i)(2) is amended by removing the words "A vessel bond, on Customs Form 7567 or 7569" and inserting, in their place, the words "A bond on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers".

9. Section 4.32(b) is amended by removing the words "Customs Form 7567" and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers".

10. Section 4.34(h) is amended by removing the words "vessel bond" in the third sentence and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in section 113.64 of this chapter".

11. Section 4.38(a) is amended by adding four sentences at the end of the paragraph to read as follows:

4.38 Release of cargo.

(a) * * * When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The importing carrier shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise

brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

12. Section 4.75(a) is amended by removing the words "Customs Form 7567 or Customs Form 7569" in the first sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers".

13. Sections. 4.85(a) and 4.88(a) are amended by removing the words "vessel bond (Customs Form 7567 or 7569)" in the first sentence of each paragraph and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers".

14. Section 4.90(e) is revised to read as follows:

4.90 Simultaneous vessel transactions.

(e) When a single entry bond, containing the bond conditions set forth in section 113.64, relating to international carriers, is filed at any port and it is applicable to the current voyage of the vessel, it shall cover all other transactions engaged in on that voyage of a like nature and another bond containing the international carrier bond conditions need not be filed.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 6—AIR COMMERCE REGULATIONS

1. Sections 6.2 (e) and (f) are amended by removing the words " , but not longer than the period of the supporting bond, " in the first sentence of each paragraph.

2. Sections 6.2 (e) and (f) are further amended by removing the words " , on Customs Form 7567 or 7569, " in the last sentence of paragraph (e) and the second sentence of paragraph (f).

3. Section 6.2(g) and the first and second sentences of section 6.9(a) are amended by removing the words "on Customs Form 7567 or 7569" and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter relating to international carriers".

4. Section 6.8 is amended by removing the words "proper bond is given" in the fourth sentence of paragraph (a) and inserting, in their place, the words "bond is filed on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter".

5. Section 6.8 is further amended by removing the words "pursuant to the bond" in the fourth sentence of paragraph (a).

6. Section 6.8 is further amended by removing the words "the 4-day bond period" in the fourth sentence of paragraph (e) and inserting, in their place, the words "the 4-day period after departure".

7. The first three sentences of section 6.20(c) are revised to read as follows:

6.20 Conditions for transportation of transit air cargo.

* * * * *

(c) Transit air cargo may be transported to another port only when receipted for by an airline designated as a common carrier, for the transportation of bonded merchandise, which has on file a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter for such transportation. Transit air cargo may be exported from the port of arrival only when covered by a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter relating to exportation of merchandise. The importing airline, whether registered in the United States or a foreign country, if it has been designated as a carrier of bonded merchandise as set forth above, may receipt for the air cargo, obligate its bond if it contains the bond conditions set forth in section 113.63 of this chapter, and deliver the air cargo to an authorized domestic carrier for in-bond transportation beyond the port of arrival under the importing airline bond. * * *

* * * * *

8. Section 6.22(e) is amended by removing the words "common carrier's bond" in the first sentence and inserting, in their place, the words "bond containing the bond conditions set forth in section 113.63 of this chapter".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

Section 7.8(c) is revised to read as follows:

7.8 Insular possessions of the United States other than Puerto Rico.

* * * * *

(c) When merchandise excluding any shipments valued at \$100 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond containing the bond conditions set forth in section 113.62 of this chapter, for the production thereof may be taken on Customs Form 301. A bond for production of a bill of lading shall be taken on Customs Form 301 and contain the bond conditions set forth in section 113.69 of this chapter.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.24(f) is amended by removing the words "an appropriate bond" and inserting, in their place, the words "a bond on Customs Form 301 containing the bond conditions set forth in section 113.62 of this chapter".

2. Section 10.31(f) is amended by removing the words "Customs Form 7563" in the first sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

3. Section 10.31(f) is further amended by revising the third sentence to read as follows:

10.31 Entry; bond.

(f) * * * If appropriate, a carnet, under the provisions of Part 114 of this chapter, may be filed in lieu of a bond on Customs Form 301 (containing the bond conditions set forth in section 113.62 of this chapter).

4. Section 10.31(g) is amended by removing the words "the bond period" in the second sentence and inserting, in their place, the words "the period of time during which the merchandise may remain in the Customs territory of the United States under bond".

5. Sections 10.36 (b) and (c) are amended by removing the words "the period of the bond" in the first sentence of each paragraph and the words "the bond period" in the second sentence of each paragraph, and, in each instance inserting, in their place, the words "the period of time during which the merchandise may remain in the Customs territory of the United States under bond".

6. Section 10.36(b) is further amended by removing the word "bonds" in the second sentence and inserting, in its place, the word "bond".

7. The second sentence of section 10.36a(a) is revised to read as follows:

10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) * * * The bond, prescribed by section 10.31(f), filed to support entry under this section shall be without surety or cash deposit, except as provided by this paragraph and paragraph (d) of this section.

8. The section heading and the first sentence of section 10.37 are revised to read as follows:

10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under schedule 8, part 5, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), may remain in the Customs territory of the United States, may be extended for not more than two further periods of 1 year each, or such shorter periods as may be appropriate. Extensions may be granted by the district director at the port where the entry was filed upon written application on Customs Form 3173, provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Carriers, Drawback and Bonds Division, Customs Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of the district directors delegated authority shall be referred to the Director, Entry Procedures and Penalties Division, Customs Headquarters, for disposition.

9. Section 10.38(a) is amended by removing the words "a temporary importation bond" in the first sentence and inserting, in their place, the words "schedule 8, part 5, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202)".

10. Section 10.39 is amended by removing the word "bonds" in the section heading and inserting in its place the words "bond charges".

11. Section 10.39 is further amended by removing the word "Bonds" in the first sentence of paragraph (a) and inserting, in its place, the words "Charges against bonds".

12. Section 10.39 is further amended by removing the word "bond" the first time it is used in the third sentence of paragraph (a) and inserting, in its place, the words "bond charge,".

13. Section 10.39 is further amended by removing the words "the bond period" in the third sentence of paragraph (a), in the first sentence of paragraph (b), in the first sentence of paragraph (d)(1), in the first sentence of paragraph (e)(2), and in the first sentence of paragraph (e)(3) and, in each instance inserting, in their place, the words "the period of time during which the articles may remain in the Customs territory of the United States under bond".

14. Section 10.39(d)(1) is amended by removing the words "to the entire amount of the bond. If the entry covering the articles is charged against a term bond, the demand shall be limited to an amount equal" in the first and second sentences.

15. Section 10.40(b) is amended by removing the words "the bond period" in the first sentence and inserting, in their place, the words "the period of time during which articles may remain in the Customs territory of the United States under bond".

16. Section 10.41a(c) is amended by removing the words "on Customs Form 7587" in the first and fifth sentences and inserting, in

their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.66 of this chapter".

17. Section 10.41a(c) is further amended by removing the words", as provided for in section 113.14(p) of this chapter" in the fifth sentence and", Customs Form 7587," in the sixth sentence.

18. Section 10.41b(h) is revised to read as follows:

10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(h) A continuous bond containing the conditions set forth in section 113.66 of this chapter shall be filed with the district director. If the conditions are violated the district director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond.

* * * * *

19. Section 10.49(a) is amended by removing the words "on Customs Form 7565" in the first sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

20. Section 10.49(b) is amended by adding a sentence at the end of the paragraph to read as follows:

10.49 Articles for exhibition; requirements on entry.

* * * * *

(b) * * * The society or institution shall file, within 6 months after the date of filing the entry, any document or proof demanded by the district director in connection with the entry.

21. Section 10.59(e) is amended by removing the words "on Customs Form 7603" in the second sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

22. Section 10.60 is amended by removing the word "bonds" in the section heading and inserting in its place, the word "bond".

23. Section 10.60 is further amended by removing the words "on Customs Form 7561 or other appropriate form" in paragraph (c) and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

24. Section 10.60 is further amended by removing the words "on Customs Form 7557, 7559, or 7595" in the first and second sentences of paragraph (f) and inserting in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

25. Section 10.60 is further amended by removing the words "on Customs Form 7603 in lieu of any other bond" in paragraph (g) and

inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

26. Section 10.64(a) is amended by removing the words "the warehouse or rewarehouse entry bond or the bond identified in section 10.60 (c) or (f) for articles withdrawn under section 309, Tariff Act of 1930, as amended, for use as supplies, equipment, or for repair of a vessel" in the first sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

27. Section 10.64(a) is further amended by adding a sentence between the first and second sentence to read as follows:

10.64 Crediting or cancellation of bonds.

(a) * * * The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the district director within 30 days after lading, except as provided in this section. * * *

28. Section 10.65(c)(3) is amended by removing the words "The bond on Customs Form 7561 or other appropriate form" in the third sentence and inserting, in their place, the words "A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

29. Section 10.66(b) is amended by adding the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter" after the word "bond" in both the first and second sentences.

30. Section 10.67(b) is amended by adding the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter" after the word "bond" in the second sentence.

31. Section 10.71 is amended by removing the words "on Customs Form 7551 or 7553" in the first sentence of paragraph (a), in the second sentence of paragraph (e), and in the first sentence of paragraph (f) and, in each instance inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

32. Section 10.71 is further amended by removing the word "Such" in paragraph (b) and inserting, in its place, the words "Charges against the".

33. Section 10.80 is amended by removing the words "on Customs Form 7561 or other appropriate form" in the sixth sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

34. Section 10.81(b) is amended by removing the words "on Customs Form 7561 or other appropriate form when necessary" in the second sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

35. Section 10.83(a) is amended by adding the words "charges against the" after the words "the district director may cancel the".

36. Section 10.90(f) is revised to read as follows:

10.90 Master records and metal matrices.

(f) A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter shall be filed for importations under this section.

37. Section 10.92 is amended by removing the word "penalty" in the section heading and inserting, in its place, the words "liquidated damages".

38. Section 10.92 is further amended by removing the words "single entry bond on Customs Form 7547, unless the transaction is charged against a term bond on Customs Form 7549, or other appropriate form" in the first sentence of paragraph (a) and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

39. Section 10.92 is further amended by removing the words "The penalty of the" in the second sentence of paragraph (a) and inserting, in their place, the word "A".

40. Section 10.92 is further amended by removing the words "The penalty of the term bond" in the third sentence of paragraph (a) and inserting, in their place, the words "The amount of a continuous bond".

41. Sections 10.92 (b) and (c) are amended by removing the word "term" in paragraph (b) and in the first and second sentences of paragraph (c) and, in each instance inserting, in their place, the word "continuous".

42. Section 10.108(b) is amended by removing the words "as provided for in section 141.66 of this chapter" in the last sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

43. Section 10.135 is amended by removing the last sentence.

44. Section 10.173(a)(3) is amended by removing the words "Customs Form 7551, 7553, or 7595" in the first sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,".

45. Section 10.173(a)(3) is further amended by removing the second sentence.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 11—PACKING AND STAMPING; MARKING

1. Section 11.12(c) is amended by removing the words "the usual customs single entry or term bond in such amount as is prescribed for such bonds in section 113.14 of this chapter" and inserting, in their place, the words "bonds on Customs Form 301, containing the bond conditions set forth in section 113.62 and/or section 113.68 of

this chapter, as appropriate, in such amount as the district director may require".

2. Section 11.12a(c) is amended by removing the words "the usual customs single entry or term bond in such amounts as is prescribed for such bonds in section 113.14 of this chapter" and inserting, in their place, the words "bonds on Customs Form 301, containing the bond conditions set forth in section 113.62 and/or section 113.68 of this chapter, as appropriate, in such amount as the district director may require".

3. Section 11.12b(c) is amended by removing the words "the usual customs single entry or term bond in such amount as is prescribed for such bonds in section 113.14 of this chapter" and inserting, in their place, the words "bonds on Customs Form 301, containing the bond conditions set forth in section 113.62 and/or section 113.68 of this chapter, as appropriate, in such amount as the district director may require".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. Section 12.3 is amended by removing the words "on Customs Form 7551, 7553, or 7595, containing a condition for the return of the merchandise, or any part thereof, to Customs custody upon demand of the district director of Customs" in the second sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

2. Section 12.8 is amended by removing the words "on Customs Form 7551, 7553, or other appropriate form" in the third sentence of paragraph (a) and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

3. Section 12.8 is further amended by removing the words "of bonds" in the first sentence of paragraph (b) and inserting, in their place, the words "of a bond".

4. Section 12.12 is amended by removing the words "on Customs Form 7551, 7553, or other appropriate form" and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

5. Section 12.16(c) is amended by placing a period after the word "bond" the first time it is used in the paragraph, and removing the remainder of the paragraph.

6. Section 12.16(c), is further amended by adding two sentences at the end of the paragraph to read as follows:

12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

* * * * *

(c) * * * The bond shall be filed with the district director on Customs Form 301 and contain the bond conditions set forth in section 113.62 of this chapter. In case of default the district director shall issue a claim for liquidated damages under the bond.

7. Section 12.26(e) is amended by revising the third and fourth sentences to read as follows:

12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered and threatened species; designated ports of entry; permits required.

(e) * * * The shipment may be immediately released if a bond is filed with the district director on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, in an amount equal to the entered value plus estimated duties. If the bond conditions are violated the district director shall issue a claim for liquidated damages under the bond. In lieu of filing a bond the merchandise may be left in Customs custody at the risk and expense of the importer pending issuance of the permit.

8. Section 12.26(h) is amended by removing the words "the bond shall be forfeited" in the last sentence and inserting, in their place, the words "a claim for liquidated damages shall be issued under the bond".

9. Section 12.33 is amended by removing and reserving paragraph (c).

10. Section 12.39(b)(2) is amended by removing the words "a special rider to existing entry bonds, as described in section 113.14(z) of this chapter" in the first sentence and inserting, in their place, the words "a single entry bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter in an amount determined by the International Trade Commission".

11. Section 12.39(b)(3) is amended by removing the word "rider" in the third sentence.

12. Section 12.73(c) is amended by removing the words "on Customs Form 7551, 7553, or 7595" in the first sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,".

13. Section 12.73(c) is further amended by removing the second sentence.

14. Section 12.73(c) is further amended by removing the words "a bond given on Form 7551" in the fifth sentence, and inserting, in their place, the words "the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond".

15. Section 12.73(c) is further amended by removing the sixth sentence.

16. Section 12.80(b)(1)(iii), is amended by removing the words "the conditions of the bond required by paragraph (e)(1) of this section

have been satisfied" in the last sentence and inserting, in their place, the words "the vehicle or equipment item described in the declaration has been brought into conformity with all applicable safety standards".

17. Section 12.80(e)(1) is amended by removing the words "on Customs Form 7551, 7553, or 7595 in the amount required by section 113.14 of this chapter" in the first sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

18. Section 12.80(e)(1) is further amended by removing the second sentence.

19. Section 12.80(e)(1) is further amended by removing the words "The bond release" in the third sentence and inserting, in their place, the words "An approval".

20. Section 12.80(e)(1) is further amended by removing the words "bond release" in the fourth sentence and inserting in their place the word "approval".

21. Section 12.80(e)(1) is further amended by adding a sentence at the end of the paragraph to read as follows:

12.80 Federal motor vehicle safety standards.

* * * * *

(e)(1) * * * Upon receipt of the approval letter the district director shall cancel the charge against the bond.

* * * * *

22. Section 12.80(e)(2) is amended by removing the words "bond release" in the first sentence and inserting, in their place, the word "approval".

23. Section 12.80(e)(2) is further amended by removing the words "given on Customs Form 7551" in the second sentence and inserting, in their place, the words "if it is a single entry bond or if a continuous bond is used, the amount that would have been taken under a single entry bond".

24. Section 12.80(e)(2) is further amended by removing the third sentence of the paragraph.

25. Section 12.85(e)(1) is amended by revising the first sentence of the paragraph to read as follows:

12.85 Coast Guard boat and associated equipment safety standards.

(a) * * *

(e) *Release under bond*—(1) *When bond required.* A bond will be required of the importer or consignee on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, in such amount as the district director deems appropriate, when a declaration is made that a product is to be brought into conformity. * * *

26. Section 12.85(e)(3) is amended by removing the words "given on Customs Form 7551" in the first sentence and inserting, in their place, the words "If it is a single entry bond, or if a continuous

bond is used, the amount that would have been taken under a single entry bond”.

27. Section 12.85(e)(3) is further amended by removing the second sentence.

28. Section 12.91(d) is amended by removing the words “on Customs Form 7551, 7553, or 7595” in the first sentence and inserting, in their place, the words “on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,”.

29. Section 12.91(d) is further amended by removing the words “the amount required under section 113.14 of this chapter” in the second sentence and inserting, in their place, the words “an amount deemed appropriate by the district director”.

30. Section 12.91(d) is further amended by removing the words “given on Customs Form 7551” in the fifth sentence and inserting, in their place, the words “if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond”.

31. Section 12.91(d) is further amended by removing the sixth sentence of the paragraph.

32. Section 12.115 is amended by removing the words “on Customs Form 7551, 7553, and 7595” in the second sentence and inserting, in their place, the words “on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,”.

33. Section 12.115 is further amended by removing the words “the amount required under section 113.14 of this chapter” in the third sentence and inserting, in their place, the words “an amount deemed appropriate by the district director”.

34. Section 12.117(b) is amended by removing the word “assess” in the third sentence and inserting in its place the words “issue a demand for”.

35. Section 12.117(b) is further amended by adding the words “if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond” at the end of the third sentence.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. Section 18.3(e) is amended by removing the words “Carrier’s Bond” and inserting, in their place, the words “bond of the carrier on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter”.

2. Section 18.6(b) is revised to read as follows:

18.6 Short shipments; shortages; entry and allowance.

* * * * *

(b) When there is a shortage of one or more packages, or nondelivery of an entire shipment, or delivery to unauthorized locations, or delivery to the consignee without the permission of Customs, the district director may demand return of the merchandise to Customs custody. The demand shall be made no later than 30 days after the shortage, delivery, or nondelivery is discovered by Customs. The demand for the return of the merchandise to Customs custody shall be made on the bonded carrier, cartman, or lighter-man identified on the Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, Customs Form 7512, the Transit Air Cargo Manifest (TACM), or other appropriate document. The demand for the return of the merchandise shall be made on Customs Form 4647, Notice of Redelivery, or other appropriate form or by letter. A copy of the demand with the date of mailing or delivery noted thereon, shall be retained by the district director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

3. Section 18.6(c) is amended by adding the words "if the merchandise is not returned to Customs custody within 30 days of the date of mailing or date of delivery of the demand for redelivery," after the words "Except as provided in paragraph (d) of this section," in the second sentence.

4. Section 18.20(b) is amended by removing the words "on Customs Form 7557" in the second sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

5. Section 18.25 is amended by redesignating paragraph (e) as paragraph (f), adding a new paragraph (e) as set forth below, and revising the first sentence of paragraph (b) and the second sentence of paragraph (d) to read as follows:

18.25 Direct exportation.

(b) A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, shall be required. * * *

(d) * * * A charge shall be made against the continuous bond on Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter, if on file, or if a continuous bond is not on file, a single entry bond containing the bond conditions set forth in section 113.64 shall be required as in the case of residue cargo for foreign ports. * * *

(e) The principal on any bond filed to guarantee direct exportation shall cause the merchandise to be exported and provide such evidence of exportation as required by the district director under section 113.55 of this chapter within 30 days of exportation.

6. Section 18.26(a) is amended by removing the words "§ 18.25(a)" in the first sentence and inserting, in their place, the words "§ 18.25(d)".

7. Section 18.26 is further amended by adding a new paragraph (d), and revising the second sentence of paragraph (a) to read as follows:

18.26 Indirect exportation.

(a) * * * Upon acceptance of the entry by Customs and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. * * *

(d) The bonded carrier shall cause the merchandise to be exported and provide such evidence of exportation as required by the district director under section 113.55 of this chapter within 30 days of exportation.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Section 19.2 is amended by removing the words "in the form prescribed by T.D. 82-204" in paragraph (c) and in the first and second sentences of paragraph (d) and inserting, in their place, in each instance the words "on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter".

2. Section 19.2(e) is amended by removing the words "proprietor's warehouse bond" in the first sentence and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter".

3. Sections 19.11 (c) and (d) are amended by adding a sentence at the beginning of paragraph (c), and a sentence between the third and fourth sentences of paragraph (d) to read as follows:

19.11 Manipulation in bonded warehouses and elsewhere.

(c) Warehouse proprietors shall not allow manipulation of merchandise without a permit issued by the district director. * * *

(d) * * * The proprietor shall not allow any manipulation to be conducted before a permit is issued or without the permission of the district director. * * *

4. Section 19.12(a)(1) is amended by adding the words ", smelted, refined" after the word "manufactured" in the first sentence.

5. Section 19.12(a)(3) is revised to read as follows:

19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* * * *

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordinary shortage or damage (one percent or more of the value of the merchandise in an entry) shall be immediately brought to the attention of the district director, and confirmed in writing within 2 business days after the shortage, overage, or damage has been brought to the attention of the district.

6. Section 19.12(a)(4) is amended by removing the words "and (ii)" and inserting, in their place, the words ", (ii) notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and (iii)".

7. Section 19.12(a)(5) is amended by removing the words "in the form prescribed by T.D. 82-204" and inserting, in their place, the words "on Customs Form 300".

8. Section 19.12(b)(6) is amended by adding the words "and recorded in the proprietor's inventory and accounting records" after the word "warehouse" in the first sentence.

9. Section 19.13 is amended by adding three new sentences at the end of paragraph (g) and a new paragraph (h) to read as follows:

19.13 Requirements for establishment of warehouse.

* * * (g) * * * The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards and specifications of T.D. 72-56. The proprietor shall mark each package with the correct warehouse entry number and date until manufacturing takes place. After manufacture, the proprietor shall mark each package of the finished product with the warehouse entry number and date.

(h) Entry shall be made and duties paid, where applicable, on any imported machinery or other equipment or apparatus that is for the construction of the warehouse or for the pursuit of its business.

10. Part 19 is amended by adding a new section 19.13a to read as follows:

19.13a Recordkeeping requirements. The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of section 19.12(a). In addition, the proprietor shall:

(a) Record all transfers from any storage area to a manufacturing area, and record all transfers from a manufacturing area to a finished product storage area, in the proprietor's inventory control and accounting records;

(b) Take an annual physical inventory of the merchandise in conjunction with the annual submission required by section 19.12(a)(5); and

(c) Record all manufacturing operations performed within the warehouse with sufficient detail to determine whether there has been compliance with the manufacturing formula filed with Customs and to permit Customs to audit use and disposition of the merchandise.

11. Section 19.14 is amended by revising paragraph (b) and adding a new paragraph (e) to read as follows:

19.14 Materials for use in manufacturing warehouse.

* * * * *

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter shall be required.

* * * * *

(e) *Monthly statement.* At the end of each month, the proprietor shall file with the district director a statement of all imported merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles. The statement shall report this information for each warehouse entry represented in the manufacturing process.

12. Section 19.14(d) is amended by removing the words "a bond on Customs Form 7571 shall be required unless the warehouse is covered by the appropriate bond in the form prescribed by T.D. 82-204" and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

13. Section 19.15(g)(1) is amended by removing the third, fourth, and fifth sentences and inserting, in their place, the following:

19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

* * * * *

(g)(1) * * * A rewarehouse entry shall be made in accordance with section 144.34(b) of this chapter, supported by a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter.

* * * * *

14. Section 19.15(j) is amended by inserting the words "within 6 months from the date of demand by the district director," between the words "manufacturer" and "shall" in the first sentence.

15. Section 19.15(1) is amended by removing the word "general".

16. Section 19.16(g)(1) is amended by removing the words "the Proprietor's Manufacturing Warehouse Bond in the form prescribed by T.D. 82-204" in the last sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter".

17. Section 19.17 is amended by removing paragraph (b) and reserving it.

18. Section 19.17(e) is amended by revising the second sentence to read as follows:

19.17 Application to establish warehouse; bond.

(e) *Bond.* * * * A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter shall be on file. * * *

18. Section 19.17 is further amended by adding a sentence at the end of paragraph (f) to read as follows:

19.17 Application to establish warehouse; bond.

(f) * * * The proprietor shall maintain a report of sampling, weighing, and assay of each shipment of bonded materials received into the warehouse for 5 years after liquidation of the warehouse entry for shipment.

19. Section 19.21 is amended by adding a sentence at the end of paragraph (b) to read as follows:

19.21 Smelting and refining in separate establishments.

(b) * * * A report of sampling, weight, and assay of transferred material shall be maintained for 5 years after liquidation of the warehouse entry.

20. Section 19.40(a) is revised to read as follows:

19.40 Establishment of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon the filing of an application therefore and its approval by the district director and the posting of a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter in such amount as the district director shall require.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. Section 24.1(a)(3) is amended by removing the words "an entry bond or other" in the first sentence and inserting, in their place, the word "a".

2. Section 24.4(i) is revised to read as follows:

24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(i) *Duration of deferred payment privilege.* The deferred payment privilege once approved by the district director will remain in effect until terminated under the provisions of paragraph (h) or the importer or surety requests termination.

3. Section 24.11(a)(2) is amended by revising it to read as follows:
24.11 Increased or additional duties or taxes; notice to importer.

(a) * * *

(2) A bond as required by section 141.20 on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter.

4. Section 24.11(b) is amended by removing the words "In any case in which a timely owner's declaration, but not a timely superseding bond, has been filed," and inserting, in their place, the words "In any case in which an owner's declaration has been filed timely but the bond has not been filed timely".

5. Section 24.16(c), is amended by removing the words "on Customs Form 7597 or 7599" in the third sentence of paragraph (c)(1) and "on Customs Form 7597" in the fourth sentence of paragraph (c)(1) and, in each instance inserting, in their place, the words "on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, Part 113 of this chapter (see sections 113.62, 113.63, 113.64 and 113.73),".

6. Section 24.16(c)(3) is amended by removing the words "bond on Customs Form 7599" in the first sentence and inserting, in their place, the words "a continuous bond".

7. Section 24.16(c)(3) is further amended by removing the words "nor longer than the period of the supporting bond" in the first sentence.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

The first and second sentences of section 54.6(b) are revised to read as follows:

54.6 Proof of intent; bond; proof of use; liquidation.

(b) If the articles are entered for consumption or warehouse, a bond shall be filed on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter. Withdrawals from warehouse shall be made on Customs Form 7506. * * *

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 101—GENERAL PROVISIONS

Section 101.1 is amended by redesignating paragraphs (k), (l) and (m) as paragraphs (l), (m) and (n), respectively, and adding a new paragraph (k) to read as follows:

101.1 Definitions.

(k) *Exportation*. "Exportation" means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. Section 112.11(a)(4)(ii) is amended by removing the words "Customs Form 3588, 'Private Carriers Bond'" and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter".

2. Section 112.12(a) is amended by removing the words "on Customs Form 3587 (except private carriers which file on Customs Form 3588 and airline companies which have the option to file a consolidated aircraft bond, Customs Form 7605 or the Customs Form 3587)" and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter".

3. Section 112.22(a)(1) is revised to read as follows:

112.22 Application for license.

(a) *General requirements.* * * *

(1) A bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter, in an amount specified by the district director.

4. Section 112.25 is revised to read as follows:

112.25 Bonded carriers.

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in section 113.63 of this chapter may be appointed or licensed as a Customs cartman

or lighterman for a port for which such bond provides coverage, upon compliance with section 112.22. If a bond on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter has been filed, the carrier or freight forwarder need not file another bond to satisfy the requirements of section 112.22(a)(1). Investigation pursuant to section 112.23 may apply.

5. Section 112.26 is amended by removing the words "section 113.56" and inserting, in their place, the words "section 113.26".

6. Section 112.27(d) is amended by removing the words "in accordance with the provisions of the bond, Customs Form 3855, or the cartman or lighterman shall be liable for the payment of liquidated damages as provided in such bond", and by adding a period after the word "license".

7. Section 112.49(d) is amended by removing the bond format for the Bond of Customs Cartman for Issuance of Temporary Identification Card and by revising the last sentence to read as follows:

112.49 Temporary identification cards.

* * * * *

(d) *Bond.* * * * The bond shall be on Customs Form 301 and contain the bond conditions set forth in section 113.63 of this chapter and be in such amount as determined by the district director.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 113—CUSTOMS BONDS

Part 113, Customs Regulations, is revised to read as follows:

PART 113—CUSTOMS BONDS

Sec.

113.0 Scope.

Subpart A—General Provisions

- 113.1 Authority to require security or execution of bond.
- 113.2 Powers of Commissioner of Customs relating to bonds.
- 113.3 Liability of surety on a terminated bond.
- 113.4 Bonds and carnets.

Subpart B—Bond Application and Approval of Bond

- 113.11 Bond approval.
- 113.12 Bond application.
- 113.13 Amount of bond.
- 113.14 Approved form of bond inadequate.
- 113.15 Retention of approved bonds.

Subpart C—Bond Requirements

- 113.21 Information required on the bond.
- 113.22 Witnesses required.
- 113.23 Changes made on the bond.
- 113.24 Riders.
- 113.25 Seals.

- 113.26 Effective dates of bonds and riders.
- 113.27 Effective dates of termination of bond.

Subpart D—Principals and Sureties

- 113.30 Information pertaining to principals and sureties on the bond.
- 113.31 Same party as principal and surety; attorney in fact.
- 113.32 Partnerships as principals.
- 113.33 Corporations as principals.
- 113.34 Co-principals.
- 113.35 Individual sureties.
- 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.
- 113.37 Corporate sureties.
- 113.38 Delinquent sureties.
- 113.39 Procedure to remove a surety from Treasury Department Circular 570.
- 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

Subpart E—Production of Documents

- 113.41 Entry made prior to production of documents.
- 113.42 Time period for production of documents.
- 113.43 Extension of time period.
- 113.44 Assent of sureties to an extension of a bond.
- 113.45 Charge for production of a missing document made against a continuous bond.
- 113.46 Cancellation of bond charges resulting from failure to produce documents.

Subpart F—Assessment of Damages and Cancellation of Bond

- 113.51 Cancellation of bond or charge against the bond.
- 113.52 Failure to satisfy the bond.
- 113.53 Waiver of Customs requirement supported by a bond.
- 113.54 Cancellation of erroneous charges.
- 113.55 Cancellation of export bonds.

Subpart G—Customs Bond Conditions

- 113.61 General.
- 113.62 Basic importation and entry bond conditions.
- 113.63 Basic custodial bond conditions.
- 113.64 International carrier bond conditions.
- 113.65 Repayment of erroneous drawback payment bond conditions.
- 113.66 Control of containers and instruments of international traffic bond conditions.
- 113.67 Licensed public gauger bond conditions.
- 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.
- 113.69 Production of bill of lading bond conditions.
- 113.70 Bond condition to indemnify United States for detention of copyrighted material.
- 113.71 Bond condition to observe neutrality.
- 113.72 Bond condition to pay court costs (condemned goods).
- 113.73 Foreign trade zone operator bond conditions.

Authority. R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended; (19 U.S.C. 66, 1623, 1624). Subpart E also issued under sec. 484, 46 Stat. 722, as amended (19 U.S.C. 1484). Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for cancelling the bond or charges against a bond.

Subpart A—General Provisions

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the district director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of Customs may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty for violation of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the Customs laws or regulations shall be known as Customs bonds.

(b) *Carnets*. A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in Part 114 of this chapter, are ordinarily acceptable without posting further security under the Customs laws or regulations requiring bonds.

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond approval.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a Customs transaction or multiple transactions must submit the bond on Customs Form 301. If the transaction(s) will occur in a single Customs district, the bond shall be filed with and approved by the district director of the district in which the transaction(s) will take place. If the transactions will occur in more than one district the bond may be filed with and approved by any district director. Only one continuous bond for a particular activity will be authorized for each principal. The district director will determine whether the bond is in proper form and provides adequate security for the transaction(s). A bond relating to repayment of an erroneous drawback payment containing the bond conditions set forth in section 113.65 shall be filed with the appropriate regional commissioner for approval.

§ 113.12 Bond application.

(a) *Single entry bond application*. In order to insure that the revenue is adequately protected the district director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application*. If a person wants to secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a bond application, which may be in the form of a letter, shall be submitted to the district director.

(1) *Information required*. The application shall contain the following information:

- (i) The general character of the merchandise to be entered; and
- (ii) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs. The total amount of duties and taxes shall be that which

would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change shall be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the district director approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application containing an update of the information required by subparagraph (1) of this paragraph. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than \$100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar shall be disregarded in computing the amount of a bond. The bond always shall be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment (see section 113.11) should at least consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with Customs demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of Customs and other laws and regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that Customs will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* The district directors and regional commissioners shall periodically review each bond filed in their respective district or region in the case of a bond relating to repayment of erroneous drawback payment (see section 113.11) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the district or regional commissioner determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if a district director or regional commissioner believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of Customs laws or regulations, he shall require additional security.

§ 113.14 Approved form of bond inadequate.

If the district director believes that none of the conditions contained in subpart G of this Part is applicable to a transaction sought to be secured, the district director shall draft conditions which will cover the transaction, but before execution of the bond the conditions shall be submitted to Headquarters, Attention: Director, Carriers, Drawback and Bonds Division, for approval.

§ 113.15 Retention of approved bonds.

All bonds approved by the district director, except the bond containing the agreement to pay court costs (condemned goods) (see § 113.72) shall remain on file in the district office unless the district director is directed in writing by the Director, Carriers, Drawback and Bonds Division as to other disposition. The bond containing the agreement to pay court costs (condemned goods), shall be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). The bond relating to repayment of erroneous drawback payment containing the conditions set forth in section 113.65 shall be retained in the regional office of the approving regional commissioner.

Subpart C—Bond Requirements

§ 113.21 Information required on the bond.

(a)(1) *Identification of principal and sureties.* The names of the principal and sureties and their respective places of residence shall appear in the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business shall appear.

(2) *Identification of trade names and unincorporated divisions of a corporate principal.* The principal may list on the bond trade names and the names of unincorporated divisions of the corporate

principal which do not have a separate and distinct legal status who are authorized to use the bond in their own name.

(b) *Date of execution.* Each bond shall bear the date it was actually executed.

(c) *Statement of the amount.* The amount of the bond shall be stated in figures.

(d) *Use of abbreviations.* Abbreviations shall not be used except in dates and the state of incorporation of the principal or the surety.

(e) *Blank spaces on the bond.* Lines shall be drawn through all spaces and blocks on the bond which are not filled in.

§ 113.22 Witnesses required.

(a) *Generally.* The signature of each party to a bond executed by a noncorporate principal or surety shall be witnessed by two persons, who shall sign their names as witnesses, and include their addresses.

(b) *Witness for both principal and surety.* When two persons signing as witnesses act for both principal and surety. They shall so indicate by stating on the bond "as to both".

(c) *Corporate principal or surety.* No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§ 113.33 and 113.37 of this Part.

§ 113.23 Changes made on the bond.

(a) *Definition of the types of changes.*

(1) *Modification or interlineation.* Modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures.* Alterations or erasures consist of minor changes, such as the correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing.* When erasures, alterations, modifications, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect shall be placed upon the bond.

(c) *After signing.* If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by Customs, the consent of all the parties shall be written on the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the commissioner, no modification or interlineation shall be made on the bond after execution. When a modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by Customs.* Except in cases where a change in the bond is expressly authorized by regulations, or in-

structions from the Commissioner, the district director shall not permit a change as defined in paragraph (a) of this section after the bond has been approved by Customs. When changes are desired, a new bond is required, which, when approved, shall supersede the existing bond.

§ 113.24 Riders.

(a) *Types of riders.* The district director may accept the following types of bond riders.

(1) *Name change of principal.* A bond rider to change the name of a principal on a bond may be used only when the change in name does not change the legal identity or status of the principal. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider for a name change of the principal cannot be used. A new bond would be required.

(2) *Address change.* A bond rider may be used to change the address of a principal on a bond.

(3) *Addition and deletion of trade names and unincorporated divisions of a corporate principal.* A bond rider may be used to add to or delete from a bond trade names and the names of unincorporated divisions of a corporate principal which do not have a separate and distinct legal status.

(b) *Where filed.* A rider must be filed with the district director in whose district the bond was approved.

(c) *Attachment of rider to bond.* All riders expressly authorized by the Commissioner shall be securely attached to the related bond to prevent their loss or misplacement.

(d) *Format of Rider.* The riders shall be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this Part. The riders shall contain the following conditions:

(1) *Name change of principal.*

By this rider to the Customs Form 301, ____ (bond number), dated ____, executed by ____, (former name), as principal, ____ (importer number), the, ____ (new name), hereby certifies that it is the same entity formerly known as ____, (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under principal's former name. Principal and surety agree to be bound under this bond to the same extent as if this bond had been executed in the principal's new name. This rider is effective on ____ (date).

(2) *Address change.*

By this rider to Customs Form 301, ____ (bond number) executed on ____ (date), by ____, (principal's name), as principal, ____, (importer number), and ____ (surety's name and code), a surety, which is effective on ____ (date), the principal surety or both, intend that the bond be amended to show ____ (new address) as their address. The principal, surety of both, as may be appropriate agree to be

bound as though this bond has been executed with the new address(s) shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate principal.*

(i) *Addition rider.* By this rider to the Customs Form 301, ____, (bond number), executed on ____, (date), by ____, (principal's name), as principal, ____, (importer number) and ____, (surety's name and code), as surety, which is effective on ____, (date), the principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act shall be considered to be the act of the principal.

(ii) *Deletion rider.* By this rider to the Customs Form 301, ____, (bond number), executed on ____, (date), by ____, (principal's name) as principal, ____, (importer number and ____, (surety's name and surety code), as surety, which is effective on ____, (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate Customs bond approval official.

§ 113.25 Seals.

When a seal is required, the seal shall be affixed adjoining the signatures of principal and surety, if individuals, and the corporate seal shall be affixed close to the signatures of persons signing on behalf of a corporation. Bonds shall be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 113.26 Effective dates of bonds and riders.

(a) *General.* Bonds including the application, if required by section 113.12, and riders may be filed up to 30 days before the effective date in order to provide adequate time for Customs administrative review and processing.

(b) *Single transaction bond.* A single transaction bond is effective on the date of the transaction identified on the Customs Bond, Customs Form 301.

(c) *Continuous bond.* A continuous bond is effective on the effective date identified on the Customs Bond, Customs Form 301.

(d) *Riders for name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal.* Riders for a name change of principal, address change, and addition of trade names and unincorporated divisions of a cor-

porate principal are effective on the effective date identified on the rider.

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 10 business days after the date the district office receives the rider. If the rider is not received 10 business days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the tenth business day after it is received in the district office.

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment in whose district or region the bond was approved. The termination shall take effect on the date requested if the date is at least 10 business days after date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received at the district or regional office. If no termination date is requested, the termination shall take effect on the tenth business day following the date of receipt of the request by the district director regional commissioner in the case of bonds relating to repayment of erroneous drawback payment.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the district director in whose district the bond was approved or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment and the principal of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the district director, or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment, that a lesser time is reasonable under the facts and circumstances.

(c) *Effect of termination.* If a bond is terminated no new Customs transactions shall be charged against the bond. A new bond in an appropriate amount on Customs Form 301, containing the appropriate bond conditions set forth in subpart G of this Part, shall be filed before further customs activity may be transacted.

Subpart D—Principals and Sureties**§ 113.30 Information pertaining to principals and sureties on the bond.**

The general information pertaining to the principal and surety which must be given in the body of the bond is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.* The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety.* In executing a bond, a person may act as:

- (1) Attorney in fact for both principal and surety;
- (2) Surety and attorney in fact for the principal; or
- (3) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond.* Unless written notice of the full names of all partners in the firm has been previously filed with the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds; for example, "Aaron A. Abel, Bertrand B. Bell, and Charles C. Cole, composing the firm of Abel, Bell, Cole and Co.

(b) *Execution.* Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(c) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930 (19 U.S.C. 1495), when a Customs bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution.

§ 113.33 Corporations as principals.

(a) *Name of corporation on the bonds.* The name of a corporation executing a Customs bond as a principal, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.* The bond of a corporate principal shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney shall not be required if the person signing the bond on behalf of the corporation is known to the district director or regional commissioner to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature shall be *prima facie* evidence of

that officer's authority to bind the corporation. When a power of attorney is required it shall conform to the requirements of subpart C, Part 141 of this chapter.

(d) *Bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the district director (unless exempted from filing by section 141.46 of this chapter), there shall be attached a power of attorney executed by an officer of the corporation whose authority to execute the power shall be shown as prescribed in paragraph (c) of this section.

(e) *Subsidiaries as co-principals.* The provisions of this section shall be applicable to each corporate subsidiary which joins its parent corporation by signing the bond as co-principal.

§ 113.34 Co-principals.

A bond with a co-principal may be used by a person having a distinct legal status (e.g., individual, partnership, corporation) to join another person with the same distinct legal status on the bond. A bond with a co-principal shall not be used to join an entity which does not have a distinct legal status (e.g. an unincorporated division of a corporation). However, an entity which does not have a distinct legal status may use another bond if listed on the bond by the principal at the time of execution or by subsequent rider (see section 113.24). A bond with co-principal may not be used to join different legal entities (e.g. an individual and a corporation, a partnership and a corporation).

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there shall be two sureties on the bond, unless the district director is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety.* (1) *Residency and citizenship.* Each individual surety on a Customs bond must be both a resident and citizen of the United States.

(2) *Married women.* A married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity.

(3) *Granting of power of attorney.* Any individual other than a married woman in a state where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. Unless the power is unlimited, all persons to which the power relates shall be named.

(4) *Property requirements.* Each individual surety must have property available as security within the limits of the Customs district in which the contract of suretyship is to be approved. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of

which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned within the limits of the Customs district and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the district director may require.

(d) *Determination of financial responsibility.* An individual shall not be accepted on a bond until the district director is satisfied as to the financial responsibility of the individual. The district director may refer the matter to the special agent-in-charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuancy of financial responsibility.* In order to follow the continued solvency and financial responsibility of individual sureties, the district director shall require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.

A member of a partnership shall not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this Part.

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. The Circular shall be furnished annually to all district directors by the Secretary of the Treasury. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by Federal Register notice and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in section 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.* The name of a corporation executing a Customs bond, as a surety, may be printed or placed

thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.* The agent or attorney acting for a corporate surety shall have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Social security number of agent or attorney on the bond.* In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney shall place his/her social security number, as it appears on the corporate surety power of attorney.

(e) *Signature and seal of the corporation on the bond.* A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25 of this Part.

(f) *Two or more corporate sureties as sureties on the same obligation.* Two or more corporate sureties may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate sureties may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11). Each corporate surety shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following.

Corporate Sureties Agreement for Limitation of Liability

_____ (name of surety), _____ (surety code), a surety company incorporated under laws of the State of _____, authorized to conduct a surety business in the State of _____, and having its principal place of business at _____ (address), and _____ (names of surety), _____ (surety code), a surety company incorporated under the laws of the State of _____, authorized to conduct a surety business in the State of _____ and having its principal place of business at _____ (address), as sureties, and _____ (name of principal), as principal, are jointly and severally obligated to the United States in the amount of _____ (\$) on a bond executed on _____ (date of execution) with each surety jointly and severally obligate with the principal in the amounts listed below and no more:

_____ (name of surety) _____ (\$ _____)

_____ (name of surety) _____ (\$ _____)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated

by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this ____ day of _____ 19__

____ Principal

____ Surety

____ Surety

____ District Director (Regional Commissioner)

(g) *Power of attorney for the agent or attorney of the surety.* Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents.* The corporate surety power of attorney shall be executed on Customs Form 5297, and shall contain the following information:

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and social security number of agent or attorney,

(iii) District(s) in which the agent or attorney is authorized to act,

(iv) Date of execution of power of attorney,

(v) Seal of the corporate surety,

(vi) Signature of any two principal officers of corporation, and

(vii) Dollar amount of authorization.

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 shall be filed at the district office unless the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, in which case the corporate surety power of attorney must be submitted in duplicate. The power of attorney may provide authority for an agent or attorney in any number of districts. If authorized to be filed at a Customs port, the port director shall send the original of the power of attorney to the Customs district office. The Customs district offices shall periodically issue to all ports within their district computer printouts reflecting all corporate powers of attorney valid for use within the district. If the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, a copy of the power of attorney shall be retained at the port where the power of attorney was filed until the first computer printout reflecting the power of attorney has been received from the district office. If a port has been delegated the authority to approve bonds, the copy of the power of attorney retained at the port can be used in connection with bond approval at the port for bonds executed by the person covered by the corporate surety power of attorney, until the computer printout is received. The original of the corporate surety power of attorney shall be retained at the district office with jurisdiction over the location where the corporate surety power of attorney was submitted.

(3) *Use at port where power of attorney not filed before receipt of computer printout.* If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one

where the power of attorney was filed, before the first computer printout reflecting this power of attorney is received, the Customs Form 5297 shall be filed in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, shall provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney shall expire when the first computer printout reflecting this power of attorney is received.

(4) *Term and revocation.* Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on Customs Form 5297. The revocation shall take effect on the close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the district office.

(5) *Change on the power of attorney.* No change shall be made on the Customs Form 5297 after it has been approved by Customs except the following: (i) Grantee name change, (ii) grantee address change, and (iii) the addition of district(s) to the corporate surety power of attorney on file. To make any other change to the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another customs bond.* No person shall be accepted as surety on any Customs bond while in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond.* A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of bond by district director.* A district director may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the district director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of § 177.11 from the Director; Carriers, Drawback and Bonds Division, Customs Headquarters.

(2) *Nonacceptance of bond by regional commissioner.* A regional commissioner may, when he believes the circumstances warrant, issue instructions to the district directors within his region that

they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof in more than one district in his region.

(3) *Nonacceptance of bond upon instructions by Commissioner.* The Commissioner may, when he believes the circumstances warrant issue instructions to the district directors and regional commissioners that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(4) *Notice of surety.* The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(5) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, above, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds the appropriate Customs officer shall notify the Director, Carriers, Drawback and Bonds Division, Customs Headquarters. Notice shall be given to the importing public by posting a copy of the decision in the customhouse. The decision shall also be published in the Customs Bulletin.

(6) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(7) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c)(1), (2), and (3) of this section shall be consistent with the requirements of this section.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a district director or regional commissioner is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the district director or regional commissioner may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570. The fact that collection proceedings have been, or are to be, started on a bond does not preclude use of this procedure if the district director or regional commissioner believes such action is warranted.

(a) *Report to Headquarters.* A district director or regional commissioner shall send the following evidence to Headquarters. Attn: Director, Carriers, Drawback and Bonds Division. If the report is from a district director it shall be submitted through the appropriate regional commissioner of Customs.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the district director or regional commissioner showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Carriers, Drawback and Bonds Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The district director and regional commissioner will be informed in writing of Headquarters action regarding their request for removal of the surety.

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the district director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the district director or regional commissioner, the obligor shall deliver a duly executed power of attorney and agreement authorizing the district director or regional commissioner, as appropriate, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

Power of Attorney and Agreement

(For Corporation)

____, (name of corporation) a corporation duly incorporated under the laws of the State of ____ and having its principal office in the City of ____, State of ____, as authorized by a resolution of the board of directors of the corporation, passed on the ____ day of ____, 19____, a duly certified copy of which is attached, does constitute and appoint ____ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of _____, 19____, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performances of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisalment or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this ____ day of ____ 19____.
[Corporate seal.]

By ____

Before me, the undersigned, a notary public within and for the County of ____, in the State of ____ (or the District of Columbia), personally appeared ____ (name and title of officer) and for and in behalf of said ____, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ____ day of ____, 19____.
[Notarial seal.]

Notary Public _____

Note.—Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of United States money on default.* If cash is deposited in lieu of sureties on the bond, the district director or regional commissioner, as appropriate is authorized to apply the

cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the "Missing Documents" box (box 16) on Customs Form 7501 the missing document, whether the importer gives a bond or stipulates to produce the document.

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond is given shall be delivered to the district director within 6 months from the date of the transaction in connection with which the bond was given, or within any extension of such time which may be granted pursuant to § 113.43(a). If the period ends on a Saturday, Sunday, or Federal holiday, delivery on the next business day shall be accepted as timely.

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document (other than an invoice or document which must be produced within 2 months, as provided in § 141.61(e) of this chapter) referred to in § 113.42 is not produced within 6 months from the date of the transaction in connection with which the bond was given, the district director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months.

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document shall be allowed by the district director if the application is received later than 2 months after the expiration of the period of the bond, and any extension shall not be allowed by the district director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be cancelled.

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.* The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.* The assent of the sureties shall be obtained before any extension of the period prescribed in a bond other than an extension authorized by law or regulation, is allowed.

§ 113.45 Charge for production of a missing document made against a continuous bond.

When a continuous bond secures the production of a missing document and the bond is breached by the principal's failure to timely produce that document, the claim for liquidated damages shall be in an amount equal to the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Section 172.22 of this chapter sets forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of Customs may authorize the cancellation of any bond provided for in this part or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as may be deemed sufficient.

§ 113.52 Failure to satisfy the bond.

If any Customs bond, except one given only for the production of free-entry or reduced-duty documents (see §§ 113.43(c) and 172.22(c) of this chapter), is unsatisfied upon the expiration of 90 days after liability has accrued under the bond, the matter shall be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle the matter.

§ 113.53 Waiver of Customs requirement supported by a bond.

(a) *Waiver by the Commissioner of Customs.* When a Customs requirement supported by a bond is waived by the Commissioner of Customs, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner may deem sufficient.

(b) *Waiver by the district director.* When a Customs requirement supported by a bond is waived by the district director pursuant to

the authority conferred by these regulations, the waiver shall be unconditional.

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds.* Section 172.31 of this chapter sets forth provisions relating to the cancellation of charges against the bond when it is determined that the act or omission forming the basis for the claim for liquidated damages did not in fact occur.

(b) *Carnets.* Section 114.34 of this chapter sets forth provisions relating to the cancellation of erroneous charges involving carnets.

§ 113.55 Cancellation of export bonds.

(a) *Manner of cancellation.* A bond to assure exportation as defined in § 101.1 of this chapter may be cancelled:

(1) *Upon exportation.* Upon the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if the certificate is required by the district director.

(2) *Upon payment of liquidated damages.* Upon the payment of liquidated damages.

(b) *Cancellation of bond charges of an international carrier.* The conditions of the bond of an international carrier may be considered as having been complied with upon the production of the applicable documents listed in paragraph (a)(1) of this section.

(c) *Foreign landing certificate.* A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of lading. Landing certificates are required in the following cases:

(1) *Mandatory.* A landing certificate shall be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317)), or machinery for vessels.

(2) *Optional with the district director.* A landing certificate may be required by the district director for merchandise exported from the United States, or residue cargo, when a certificate is deemed necessary for the protection of the revenue.

(3) *Waiver.* Except as provided in section 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of Customs through the district director, accompanied by such proof of exportation and landing abroad as may be available.

(d) *Articles less than \$10.* In the case of articles for which the ordinary Customs duty estimated at the time of entry did not exceed \$10 and which are exported without Customs supervision, but within the period during which the articles are authorized to remain in the Customs territory of the United States under bond (including any lawful extension), the bond may be cancelled upon production of evidence of exportation satisfactory to the district director.

Subpart G—Customs Bond Conditions

§ 113.61 General.

Each section in this subpart identifies specific coverage for a particular Customs activity. When an individual or organization files a bond with Customs the activity in which they plan on engaging will be identified on the bond. The bond conditions listed in this subpart which correspond to that activity will be incorporated by reference into the bond.

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry shall contain the conditions listed in this section and may be either a single entry or a continuous bond, except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond.

Basic Importation and Entry Bond Conditions

(a) *Agreement to Pay Duties, Taxes, and Charges.* (1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, the obligors (principal and surety) agree to:

(i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and

(ii) Pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

(2) If the principal enters any merchandise into a Customs bonded warehouse, the obligors agree;

(i) To pay any duties, taxes, and charges found to be due on any of that merchandise which remains in the warehouse at the expiration of the warehousing time limit set by law; and

(ii) That the obligation to pay duties, taxes, and charges on the merchandise applies whether it is properly withdrawn by the principal, or by the principal's transferee, or is unlawfully removed by the principal or any other person, without regard to whether the merchandise is manipulated, unless payment was made or secured to be made by some other person.

(3) Under this agreement, the obligation to pay any and all duties, taxes, and charges due on any entry ceases on the date the principal timely files with the district director a bond of the owner in which the owner agrees to pay all duties, taxes, and charges found due on that entry; provided a declaration of the owner has also been properly filed.

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 448(b) or released before completion of the entry under 19 U.S.C. 484(a), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

(1) Determine whether the merchandise may be released from Customs custody;

(2) Properly assess duties on the merchandise;

(3) Collect accurate statistics with respect to the merchandise; and

(4) Determine whether applicable requirements of law and regulation are met.

(c) *Agreement to Produce Documents and Evidence.* If merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees to furnish Customs with any document or evidence as required by law or regulation, and within the time specified by law or regulations.

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from Customs custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, the principal agrees to redeliver timely, on demand by Customs, the merchandise released if it:

(1) Fails to comply with the laws or regulations governing admission into the United States;

(2) Must be examined, inspected, or appraised as required by 19 U.S.C. 499; or

(3) must be marked with the country of origin as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later).

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the United States is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to the merchandise in order to comply with the law and regulations governing its admission into the United States within the time period set in the notification.

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a Customs officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

(2) Transfer the merchandise to another place on receipt of instructions from Customs made before release; and

(3) Keep any Customs seal or cording on the merchandise intact until the merchandise is examined by Customs.

(g) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Pay the compensation and expenses of any Customs officer, as required by law or regulation; and

(2) Exonerate the United States and its officers from any risk, loss, or expense arising out of principal's importation, entry, or withdrawal of merchandise.

(h) *Agreement on Duty-Free Entries or Withdrawals.* If the principal enters or withdraws any merchandise, without payment of duty and tax, or at a reduced rate of duty and tax, as permitted under the law, the principal agrees:

(1) To use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) If a fishing vessel, to present the original approval application to Customs within 24 hours on each arrival of the vessel in the Customs territory of the United States from a fishing voyage;

(3) To furnish timely proof to Customs that any merchandise entered or withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) To keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by Customs.

(i) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions (a) or (g), the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise.

(2) It is understood and agreed that whether the default involves merchandise is determined by Customs and that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs. Value as

used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on agreements in this condition other than conditions (a) or (g) and the default does not involve merchandise, the obligors agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation.

§ 113.63 Basic custodial bond conditions.

A basic custodial bond shall contain the conditions listed in this section and shall be a continuous bond.

Basic Custodial Bond Conditions

(a) *Receipt of Merchandise.* The principal agrees:

(1) To operate as a custodian of any bonded merchandise received and to comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise;

(2) To accept only merchandise authorized under Customs Regulations;

(3) To maintain all records required by regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized Customs officer;

(4) If authorized to operate a container station under the Customs Regulations, to report promptly to Customs each arrival of a container and its merchandise by delivery of the manifest and the application for transfer, or by other approved notice.

(b) *Carriage and Safekeeping of Merchandise.* The principal agrees:

(1) If a bonded carrier, to use only authorized means of conveyance;

(2) To keep safe any merchandise placed in its custody including, when approved by Customs, repacking and transferring such merchandise when necessary for its safety or preservation; and

(3) To comply with Customs Regulations relating to the handling of bonded merchandise.

(c) *Disposition of Merchandise.* The principal agrees:

(1) If a bonded carrier, to report promptly the arrival of merchandise at the destination port by delivering to Customs the manifest or other approved notice;

(2) If a cartage of lighterage business, to deliver promptly and safely to Customs any merchandise placed in the principal's custody together with any related cartage and lighterage ticket and manifest;

(3) To dispose of merchandise in a manner authorized by Customs Regulations; and

(4) To file timely with Customs any report required by Customs Regulations.

(d) *Agreement to Redeliver Merchandise to Customs.* If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. It is understood that the demand for redelivery shall be made no later than 30 days after Customs discovers the improper delivery.

(e) *Compliance with Licensing and Operating Requirements.* The principal agrees to comply with all Customs laws and regulations relating to principal's facilities, conveyances, and employees.

(f) *Reimbursement and Exoneration of the United States.* The principal and surety agree to:

(1) Pay the compensation and expenses of any Customs officer as required by law or regulation;

(2) Pay the cost of any locks, seals, and other fastenings required by Customs Regulations for securing merchandise placed in the principal's custody;

(3) Pay for any expenses connected with the suspension or termination of the bonded status of the premises; and

(4) Exonerate the United States and its officers from any risk, loss, or expense arising out of the principal's custodial operation.

(g) *Consequence of Default.* (1) If the principal defaults on conditions (a) through (e) in this agreement, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under conditions (a) through (e) of this agreement shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on conditions (a) through (e) in this agreement and the default does not involve merchandise, the obligors agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

§ 113.64 International carrier bond conditions

A bond for international carriers shall contain the conditions listed in this section and may be either a single entry or continuous bond.

International Carrier Bond Conditions

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Changes.* If any vessel, vehicle, or aircraft, or any master, owner, or person

in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation the obligors agree to pay the sum upon demand by Customs.

(b) *Agreement on Unlading, Safekeeping, and Disposition of Merchandise, Supplies, Crew Purchases, Etc.* The principal agrees to comply with all laws and Customs Regulations applicable to unlading, safekeeping, and disposition of merchandise, supplies, crew purchases, and other articles on board the vehicle, vessels, or aircraft; and to redeliver the foregoing to Customs upon demand as provided by Customs Regulations. If principal defaults, obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(c) *Agreement to Deliver Export Documents.* If the principal's vessel, vehicle, or aircraft is granted clearance without filing a complete outward manifest and all required export documents, the principal agrees to file timely the required manifest and all required export documents. If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages of \$50 per day for the first 3 days, and \$100 per day thereafter, up to \$1000 in total.

(d) *Exoneration of the United States.* The obligors agree to exonerate the United States and its officers from any risk, loss, or expense arising out of entry or clearance of the carrier, or handling of the articles on board.

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback shall contain the conditions listed in this section and may be either a single entry or continuous bond.

Repayment of Erroneous Drawback Payment Bond Conditions

(a) *Agreement Under Exporter's Summary Procedure.* If the principal is permitted to file drawback claims under the exporter's summary procedure and the principal's drawback claims are paid before a final determination that the principal:

- (1) Is entitled to the drawback claimed,
- (2) Correctly described the exported articles in the claim, and
- (3) Correctly stated the facts of exportation in the claim;

the principal agrees to refund, on demand, any money claimed by Customs to have been erroneously paid as a result of an incorrect statement on the drawback claim.

(b) *Agreement Under Accelerated Payment of Drawback.* If the principal receives an accelerated payment of drawback based on the principal's calculation of the drawback claim, the principal agrees to refund on demand the full amount of any overpayment, as determined on liquidation of the drawback claim.

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic shall contain the conditions listed in this section and shall be a continuous bond.

Control of Containers and Instruments of International Traffic Bond Conditions

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the Customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the Customs Regulations and section 322(a), Tariff Act of 1930, as amended, the principal agrees to:

(1) Report promptly to Customs when the instrument is diverted to point-to-point local traffic in the Customs territory of the United States or when the instrument is otherwise withdrawn in the Customs territory of the United States from its use as an instrument of international traffic;

(2) Promptly enter the instrument; and

(3) Pay any duty due on the instrument at the rate in effect and in its condition on the date of diversion or withdrawal.

(b) *Agreement to Comply With the Provisions of Items 800.00 or 808.00, Tariff Schedules of the United States.* If the principal gets free release of any serially numbered shipping container classifiable under item 800.00 or 808.00, TSUS, the principal agrees:

(1) Not to advance the value or improve its condition abroad or claim (or make a previous claim) drawback on, any container released under item 800.00, TSUS;

(2) To pay the initial duty due and otherwise comply with every condition in item 808.00, TSUS, on any container released under that item;

(3) To mark that container in the manner required by Customs;

(4) To keep records which show the current status of that container in service and the disposition of that container if taken out of service; and

(5) To remove or strike out the markings on that container when it is taken out of service or when the principal transfers ownership of it.

(c) *Consequence of Default.* (1) If the principal defaults on agreements in these conditions, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs.

(3) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

§ 113.67 Licensed public gauger bond conditions.

A bond of a licensed public gauger shall contain the conditions listed in this section and shall be a continuous bond.

Licensed Public Gauger Bond Conditions

(a) If the principal is a licensed public gauger whose reports of gauging are accepted for Customs purposes, the principal agrees to:

(1) Gauge according to the standards and procedures set by the Customs Regulations; and

(2) Submit properly any required report, proof, or abstract to Customs.

(b)(1) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(2) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation.

(3) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act shall contain the conditions listed in this section and shall be a single entry bond.

Wool and Fur Products Labeling Acts and Fiber Products Identification Act

(a) If the principal obtains release from Customs custody of any wool or fur product (hereafter "merchandise") that is subject to the provisions of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the principal guarantees that the merchandise complies with every provision of those Acts, as applicable.

(b) If any of the released merchandise does not comply with each applicable provision of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the obligors (principal or surety) agree to pay liquidated damages equal to two times the value of the merchandise involved in the default and duty thereon. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

§ 113.69 Production of bill of lading bond conditions.

A bond to produce a bill of lading shall contain the conditions listed in this section and shall be a single entry bond.

Production of Bill of Lading Bond Conditions

If the principal obtains release of any merchandise before filing a valid bill of lading on that merchandise with Customs, the obligors (principal and surety) agree to:

(a) Produce timely a valid bill of lading for the merchandise; and

(b) Relieve the United States and its employees from all liability, to indemnify the United States and its employees against loss, and defend any action brought on a claim for loss based on the release without production of a valid bill of lading.

§ 113.70 Bond condition to indemnify United States for detention of copyrighted material.

A bond to indemnify the United States for detention of copyrighted material shall contain the conditions listed in this section and shall be a single entry bond.

Bond Condition To Indemnify United States for Detention of Copyrighted Material

If Customs detains any articles alleged by the principal to be a piratical copy of material covered by the principal's copyright pending a final determination whether the articles are prohibited entry under the copyright laws, the obligors (principal and surety) agree to hold the importer or owner of those articles, jointly and severally, harmless from any material depreciation of those articles and any loss or damage caused by the detention in the event it is

finally determined that the articles are not a piratical copy of the material.

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality shall contain the conditions listed in this section and shall be a single entry bond.

Bond Condition To Observe Neutrality

(a) If clearance is granted to the principal's vessel, which is armed or is built for a war-like purpose, with a cargo of arms and munitions, so that it is likely to be used to commit hostilities against people or countries with whom the Government of the United States is at peace, the principal guarantees that the vessel will not be used to commit hostilities against any country, state, colony, or people with whom the Government is at peace.

(b) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to twice the value of the vessel and cargo.

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) shall contain the condition listed in this section and shall be a single entry bond.

Bond Condition To Pay Court Costs (Condemned Goods)

If any seized goods belonging to principal are condemned the obligors (principal and surety) agree to pay all costs of the condemnation proceedings.

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator shall continue the conditions listed in this section and shall be a continuous bond.

Foreign Trade Zone Operator Bond Conditions

If the principal is authorized to operate a foreign trade zone or subzone:

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the admission into, handling in, and removal of merchandise from the foreign trade zone or subzone; and

(2) The terms and conditions of the memorandum of understanding with Customs concerning the maintenance of records covering merchandise in the foreign trade zone or subzone. If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default in-

volves merchandise is determined by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(b) *Agreement to Pay Duties, Taxes, and Charges.* The obligors agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the foreign trade zone or subzone, which is found to be missing from the zone or cannot be accounted for in the zone, it being expressly understood and agreed that the amount of said duties, taxes, and charges shall be determined solely by Customs.

(c) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the principal's operation of the foreign trade zone or subzone;

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulations.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Section 123.8(c) is amended by removing the words "Customs Form 7567, 7569, or 7597 shall have been received" in the first sentence and inserting, in their place, the words "Customs Form 301, containing the bond conditions set forth in section 113.64 of this chapter, is on file or is filed with the request".

2. Section 123.8(c) is further amended by removing the second sentence.

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

Section 125.42 is amended by removing the words "a cartman's bond or lighterman's bond" in the first sentence and inserting, in their place, the words "the bond of the cartman or lighterman on Customs Form 301, containing the bond conditions set forth in section 113.63 of this chapter,".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Section 127.37(a) is amended by removing the words "warehouse entry bond" and inserting, in their place, the words "bond for the importation and entry of merchandise on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 132—QUOTAS

Section 132.14 is amended by removing the words "entry bond" in paragraphs (a)(4)(i)(C) and (a)(4)(ii)(B) and in each instance inserting, in their place, the words "bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in section 113.62 of this chapter".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. Section 133.24 is amended by removing the words "entry bond" in the first sentence and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,".

2. Section 133.43(b)(2) is amended by removing the words "in the form and" and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.70 of this chapter in an".

3. Section 133.46 is amended by removing the words "entry bond" in the first sentence and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 134—COUNTRY OR ORIGIN MARKING

Section 134.53(a)(2) is amended by removing the words "entry bond" in the last sentence and inserting, in their place, the words "bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in section 113.62 of this chapter".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended
(19 U.S.C. 66, 1623, 1624))

PART 141—ENTRY OF MERCHANDISE

1. Section 141.0a is amended by revising paragraph (h) and adding a new paragraph (i) to read as follows:

141.0a Definitions

(h) *Entered temporarily under bond.* "Entered temporary under bond" means that an entry summary supporting a temporary importation under bond has been filed with customs in proper form.

(i) *Released conditionally.* "Released conditionally" means any release from Customs custody before liquidation.

2. Section 141.15(b) is revised to read as follows:

141.15 Bond for production of bill of lading or air waybill.

(b) *Form.* The bond shall be on Customs Form 301 and contain the bond conditions set forth in section 113.69 of this chapter.

3. Section 141.18(b) is amended by inserting, after the word "bond", the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

4. Section 141.19(b)(2)(ii) is amended by removing the words "entry bond" and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

5. Section 141.20 is amended by removing (a) the word "term" in paragraph (a)(2) and inserting, in its place, the word "continuous", (b) the words "on Customs Form 7601" in paragraph (a)(2) and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter", and (c) the words "on Customs Form 7551 or 7553, with a resident corporate surety thereon, in lieu of a bond on Customs Form 7601" in paragraph (c) and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, with a resident corporate surety".

6. Section 141.52(g) is amended by revising it to read as follows:

141.52 Separate entries for different portions.

(a) * * *

(g) The consignment contains merchandise subject to entry under a bond given to assure accounting for final disposition, such as a temporary importation under bond.

7. Section 141.66 is amended by removing the words "an appropriate bond" and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 or section 113.69 of this chapter, as appropriate,".

8. Section 141.82(c) is amended by removing the word "term" in the first sentence and inserting, in its place, the word "continuous".

9. Section 141.83(d)(10) is revised to read as follows:

141.83 Type of invoice required.

(d) *Special Customs or commercial invoice not required.*

(10) Merchandise entered temporarily into the Customs territory of the United States under bond or for permanent exhibition under bond.

10. Section 141.84(e) is amended by inserting the words "the charges against" after the word "cancel".

11. Section 141.91(d) is amended by removing the words "gives an appropriate bond" in the first sentence and inserting, in their place, the words "files a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise,".

12. Section 141.92(c) is amended by removing the words "entry bond" and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

13. Section 141.101(e) is amended by removing the words "under a temporary importation bond, permanent exhibition bond, trade fair bond, or other similar bond" and inserting, in their place, the words "temporarily imported under bond, entered for permanent exhibition under bond, entered for a trade fair under bond or entered under bond for similar reasons".

14. Section 141.102(d) is amended by removing the words "any bond provided for in Part 113 of this chapter" in the first sentence and inserting, in their place, the words "the bond".

15. Section 141.112(g) is amended by removing the words "exact a bond of indemnity to save him harmless from any personal" and inserting, in their place, the words "require a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, to hold him harmless from any".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624)).

PART 142—ENTRY PROCESS

1. Section 142.1 is amended by removing the words "entered under a temporary importation bond" and inserting, in their place, the words "entered temporarily under bond".

2. Section 142.4(a) is revised to read as follows:

142.4 Bond Requirements.

(a) *At the time of entry.* Except as provided in section 10.101(d) of this chapter, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by section 142.3 unless a single entry or continuous bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, executed by an approved corporate surety, or secured by cash deposits or obligations of the United States, as provided for in section 113.40 of this chapter, has been filed. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

3. Section 142.4(b)(2) is amended by removing the words "one of the bonds enumerated in paragraph (a) of this section" in the first sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

4. Part 142 is amended by removing section 142.5 and reserving it.

5. Section 142.11(a) is amended by removing the words "under a temporary importation bond" in the second sentence and inserting, in their place, the words "temporarily under bond".

6. Section 142.15 is amended by removing the word "term" in the second sentence and inserting, in its place, the word "continuous".

7. Section 142.19 is amended by removing the words "an appropriate" in the first sentence and inserting, in their place, the word "a".

8. Section 142.19(a) is amended by removing the words "an entry bond is filed on Customs Forms 7551, 7555, 7595, in an amount determined in accordance with Part 113 of this chapter" in the first sentence and inserting, in their place, the words "a bond is filed on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

9. Section 142.19(a) is further amended by removing the word "entry" in the second sentence.

10. Section 142.21(a) is amended by removing the words "one of the types of Customs bonds described in section 142.4" in the first sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

11. Section 142.21(b)(2) is revised to read as follows:

142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(b) *Fresh fruits and vegetables.* (1) * * *

(2) The application shall be accompanied by a continuous bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter.

* * * * *

12. Section 142.21(e)(1) is amended by removing the words "one of the type of bonds enumerated in section 142.4" in the first sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

13. Section 142.21(f)(2) is amended by removing the words "one of the types of Customs bonds provided for in section 142.4" and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

14. Section 142.21(g) is amended by removing the words "an appropriate bond" and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

15. Section 142.22(b)(1) is amended by removing the words "under a temporary importation bond" and inserting, in their place, the words "temporarily under bond".

16. Section 142.24 is amended by removing the words "Term special" from the section heading and inserting, in their place, the word "Special".

17. Section 142.24 is further amended by removing the word "term" from paragraphs (a) and (b).

18. Section 142.24(a) is amended by removing the words ", to be imported during a period not to exceed 1 year from the date of the permit" and by changing the comma which follows the phrase "for the permit," to a period.

19. Section 142.27 is amended by removing the word "term" in the second sentence and inserting, in its place, the word "continuous".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. Section 144.2 is amended by removing the words "entry bond" in the first sentence and inserting, in their place, the words "bond filed on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

2. Section 144.2 is further amended by removing the words "warehouse entry" in the second sentence.

3. Section 144.13 is revised to read as follows:

144.13 Bond requirements.

A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter shall be filed in the amount required by the district director to support the entry documentation.

4. Section 144.14 is amended by removing the words "appropriate bond" in the first sentence and inserting, in their place, the words "bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

5. Section 144.15 is amended by removing paragraph (d).

6. Section 144.21 is amended by removing the words "an appropriate bond" in the first sentence and inserting, in their place, the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

7. Section 144.21 is further amended by placing a period after the word "liability" in the second sentence and removing the remainder of the sentence.

8. Section 144.24 is revised to read as follows:

144.24 Transferee's bond.

The transferee's bond shall be on Customs Form 301 and contain the bond conditions set forth in section 113.62 of this chapter.

9. Section 144.41 is amended by removing the words "A bond on Customs Form 7555 or other appropriate form" in the first sentence of paragraph (d) and inserting, in their place, the words "A bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

10. Section 144.41 is further amended by removing the word "entry" the first time it appears, and "warehouse entry" in the second sentence of paragraph (d).

11. Section 144.41(g) is amended by removing the words "warehouse entry bond period" and inserting, in their place, the words "5-year period during which the merchandise may remain in warehouse under bond".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 145—MAIL IMPORTATIONS

Section 145.72(d) is amended by removing the words "under a temporary importation bond" and inserting, in their place, the words "temporarily under bond".

(R.S. 251, as amended, sections 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 146—FOREIGN—TRADE ZONES

1. Section 146.42 is amended by removing the words "on Customs Form 7557 7559, or 7595" in paragraph (b)(2)(ii) and paragraph (c)(2) and, in each instance inserting, in their place, the words "on Cus-

toms Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

2. Section 146.45 is amended by removing the words "on Customs Form 7551, 7553, or other appropriate form" in paragraph (b)(3) and in the second sentence of paragraph (c)(5) and, in each instance inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 147—TRADE FAIRS

1. Section 147.2(a)(2) is amended by removing the words "Covered by a Customs exhibition bond provided for in" and inserting, in their place, the words "Imported for exhibition under".

2. Section 147.3 is revised to read as follows:

147.3 Bond required.

The fair operator shall file a bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter in such amount as the district director requires. Liquidated damages shall be assessed by the district director under the bond if payments required by sections 147.33, 147.41 or 147.43 are not paid upon demand.

3. Section 147.41 is amended by adding a sentence at the end of the section to read as follows:

147.41 Removal or disposition pursuant to regulation.

* * * The fair operator shall be liable for the payment of any unpaid duty, tax, fees, charges, or exaction due on any article removed from the fair premises or disposed of contrary to this subpart, including any article lost or stolen regardless of the fair operator's fault. The payment shall be made on demand by the district director.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.52(c) is amended by removing the words "on Customs Form 7551 or 7553" in the second sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter,".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. Section 151.7(d) is amended by removing everything in the paragraph after the words "execute a bond" and inserting, in their

place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter."

2. Section 151.11 is amended by removing the word "appropriate" in the second sentence.

3. Section 151.43 is amended by removing the words "in the amount of \$10,000" in the first sentence of paragraph (b)(6) and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.67 of this chapter,".

4. Section 151.43 is further amended by removing the second sentence of paragraph (b)(6).

5. Section 151.43(d) is amended by removing the words "public gauger bond described in section 113.13(b) of this chapter" in the second sentence and inserting, in their place, the word "bond".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. Section 162.45(a)(3) is amended by inserting the words "on Customs Form 301, containing the bond conditions set forth in section 113.72 of this chapter," after the word "bond".

2. Section 162.47(b) is amended by removing the words "on Customs Form 4615" in the first sentence and inserting, in their place, the words "on Customs Form 301, containing the bond conditions set forth in section 113.72 of this chapter".

3. Section 162.47(b) is further amended by removing the second sentence and the format for the list or schedule.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 172—LIQUIDATED DAMAGES

Section 172.22(c) is amended by removing the word "term" and inserting, in its place, the word "continuous".

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 191—DRAWBACK

1. Section 191.53(d) is amended by inserting the words "a bond on Customs Form 301, containing the bond conditions set forth in section 113.65 of this chapter, in such amount as the regional commissioner shall determine" after the words "The exporter-claimant shall furnish" and deleting the remainder of the paragraph.

2. Section 191.72(b) is amended by removing the words "either Customs Form 7609 or 7611, guaranteeing the refund of any excess payment as provided in section 113.13a of this chapter" in the first sentence and inserting, in their place, the words "Customs Form

301, containing the bond conditions set forth in section 113.65 of this chapter".

3. Section 191.72(b) is further amended by deleting the second and third sentences.

4. Section 191.133(b) is amended by removing the words "*a temporary importation bond*" in the paragraph heading and inserting, in their place, the words "*Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States*".

5. Section 191.133(b) is further amended by removing the words "under a temporary importation bond" in the first sentence.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

Appendix A—List of Customs Bonds and Riders Abolished

Customs Form 3581, Proprietor's Warehouse Bond
 Customs Form 3583, Proprietor's Manufacturing Warehouse Bond
 Blanket Smelting and Refining Bond (form prescribed by T.D. 72-244)
 Public Gaugher's Bond (form prescribed by Customs Circular BON-3-R:CD:D, July 10, 1975)
 Customs Form 3587, Carrier's Bond
 Customs Form 3588, Private Carrier's Bond
 Customs Form 3855, Bond of Customs Cartman or Lighterman
 Customs Form 4615, Bond of Claimant of Seized Goods for Cost of Court
 Customs Form 7303, Bond for the Production of Manifest and Shipper's Export Declaration
 Customs Form 7547, Special Bond—Wool or Hair of the Camel (Single Entry)
 Customs Form 7549, Special Bond—Wool or Hair of the Camel (Term)
 Customs Form 7551, Immediate Delivery and Consumption Entry Bond (Single Entry)
 Customs Form 7553, Immediate Delivery and Consumption Entry Bond (Term)
 Customs Form 7555, Warehouse Entry Bond
 Customs Form 7557, Bond for Exportation or Transportation or For Transportation and Exportation (Single Entry)
 Customs Form 7559, Bond for Exportation or Transportation or For Transportation and Exportation (Term)
 Customs Form 7561, Bond for Articles Entered or Withdrawn Form Warehouse Conditionally Free of Duty
 Customs Form 7563, Bond for Temporary Importations (Single Entry)
 Customs Form 7563-A, Bond for Temporary Importations (Term)
 Customs Form 7565, Exhibition Bond
 Customs Form 7567, Vessel, Vehicle or Aircraft Bond (Single Entry)
 Customs Form 7569, Vessel, Vehicle or Aircraft Bond (Term)
 Customs Form 7571, Bond on Entry From Manufacturing Warehouse
 Customs Form 7581, Bond to Produce Bill of Lading
 Customs Form 7587, Bond for the Control of Certain Instruments of International Traffic
 Customs Form 7591, Antidumping Bond
 Customs Form 7593, Landing Bond for Alcoholic Beverages
 Customs Form 7595, General Term Bond
 Customs Form 7597, Bond to Secure the Payment of Overtime Services (Single Entry)
 Customs Form 7599, Bond to Secure the Payment of Overtime Services (Term)
 Customs Form 7601, Superseding Bond of the Actual Owner of Imported Merchandise Whose Declaration Has Been Filed Pursuant to Title 19, United States Code, Section 1485(d)

- Customs Form 7603, Bond for Conditionally-Free Withdrawal of Distilled Spirits (Including Alcohol), Wines, or for Beer, or for Supplies of Fishing Vessel
- Customs Form 7605, Consolidated Aircraft Bond
- Customs Form 7609, Bond for Accelerated Payment of Drawback (Single Entry)
- Customs Form 7611, Bond for Accelerated Payment of Drawback (Term)
- Customs Form 7613, Drawback Export Bond Special Bond for the Entry of Merchandise Believed to Involve Unfair Practices (form prescribed in T.D. 45474)
- Special Narcotics Bond Under the Provisions of Title 19, United States Code, Section 1584 (form prescribed in T.D. 45474)
- Bond for Observance of Neutrality (form prescribed in T.D. 45474)
- Containerized Cargo Bond (form prescribed in 19 CFR 19.40).
- Trade Fair Bond (form prescribed in 19 CFR 147.3)
- Copyright Bond (form prescribed in customs Circular COP-1-PEN, March 23, 1961, Subject: Copyrights; Artificial Flowers—Piratical Copies)
- Special Bond for the Importation of Flammable Fabrics (form prescribed in Customs Circular RES-2-AC, October 29, 1971, Subject: Restrictions and Prohibitions; Importations of Merchandise Subject to the Flammable Fabrics Act)
- Bond of Customs Cartman For Issuance of Temporary Identification Card (form prescribed in 19 CFR 112.49(d))
- Bond of Foreign Trade Zone Operators (Form prescribed in Customs Circular FOR-2-0:1:C, September 3, 1976)
- Bond for Storage of Imported Tea (form prescribed in T.D. 29311)
- Special Performance Bonds (form prescribed in Customs Circular BON-1-O:D:E, August 4, 1975, Subject: Special Performance Bonds)
- Bond for the Control of Identified Shipping Containers (form prescribed in 19 CFR 10.41b(h))
- RIDER A, Agreement to account for articles, wastes, and irrecoverable losses incurred in manufacture or production under item 864.05, TSUS—to be added to CF 7563A and CF 7595 (form prescribed in T.D. 73-198).
- RIDER B, Deferred payment of internal revenue taxes—to be added to CF 7553 and CF 7595 (form prescribed in T.D. 73-198).
- RIDER C, Imported sugar subject to item 901.00, TSUS—to be added to CF 7553 and CF 7595 (form prescribed in T.D. 73-198).
- RIDER D, Withdrawals of vessel supplies under section 309(a), Tariff Act of 1930—to be added to CF 7595 (form prescribed in T.D. 73-198).
- RIDER E, Withdrawals of rewarehoused products of a class 6 warehouse—to be added to CF 7595 (form prescribed in T.D. 73-198).
- RIDER F, Withdrawals from warehouse under authority of section 5066 (b) and (c) of the Internal Revenue Code—to be added to CF 7595 (form prescribed in T.D. 73-198).
- RIDER G, Transfer of unentered bulk shipments arriving on another carrier, consigned to the principal on a vessel, vehicle, or aircraft bond—to be added to CF 7569 (form prescribed in T.D. 73-198).
- RIDER H, Storage at airports of articles withdrawn from continuous Customs custody—to be added to CF 7569 (form prescribed in T.D. 73-198).
- RIDER J, Conditional release of seed and screenings—to be added to CF 7553 and CF 7595 (form prescribed in T.D. 73-198).
- RIDER K, Proof of export under the exporter's summary procedure—to be added to CF 7595 (form prescribed in T.D. 73-198).
- RIDER L, Immediate delivery conditions—to be added to CF 7563-A (form prescribed in T.D. 73-198).
- RIDER M, Entry for warehouse of petroleum and petroleum products under Presidential Proclamation No. 4210—to be added to CF 7595 (form prescribed in T.D. 73-284).
- RIDER N, Deposit of merchandise in a bonded warehouse prior to the filing of a warehouse entry therefor—to be added to CF 7553 (form prescribed in T.D. 73-329).

RIDER O, Immediate Delivery of Fresh Fruits and Vegetables Arriving from Canada or Mexico—to be added to CF 7553 or CF 7595 (form prescribed in T.D. 76-264).

RIDER P, Accelerated payment of drawback claims—to be added to CF 7595 (form prescribed in T.D. 78-140).

Special rider to existing entry bonds for entry of merchandise found or believed to involve unfair practices or methods of competition in violation of section 337, Tariff Act of 1930, as amended (form prescribed in 19 CFR 113.14(z)(2)).

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

CUSTOMS BOND

19 CFR Part 1

APPENDIX

10

CUSTOMS USE ONLY	BOND NUMBER ¹ (Assigned by Customs)
	PICK REFERENCE

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

Execution Date

SECTION I—Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank spaces.

SECTION I— <u>Asset</u> <u>Single</u> <u>Transaction</u> <u>Continuing</u> <u>Asset</u> <u>Continuing</u> <u>Transaction</u> <input type="checkbox"/> SINGLE TRANSACTION BOND <input type="checkbox"/> CONTINUING BOND		Identification or transaction secured by this bond (e.g., entry no., return no., etc.)	Date of transaction	Transaction district & port code
Effective date		This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amounts listed below for liabilities that accrue in each period. The attention to terminate this bond must be conveyed within the time period and manner prescribed in the Customs Regulations.		

SECTION II- This bond includes the following agreements.⁸ (Check one box only, except that, 1a may be checked independently or with 1, and 3a may be checked independently or with 3. Line out all other parts of this section that are not used.)

Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability
1	Importer or broker.....	113.62	5	Public Gauger.....	113.67
1e	Drawback Payment Refunds.....	113.65	6	Wool & Fur Products Labeling Acts (reparation) (single entry only).....	113.68
2	Custodian of bonded merchandise.....	113.63	7	Bill of Lading (Single Entry Only).....	113.69
	(includes bonded carriers, freight forwarders, cartmen and lightermen, all classes of warehouse, container station operators)		8	Detention of Copyrighted Material (single entry only).....	113.70
3	International Carrier.....	113.64	9	Neutrality (Single Entry Only).....	113.71
3e	Instruments of International Traffic.....	113.66	10	Court Costs for Condemned Goods (single entry only).....	113.72
4	Foreign Trade Zone Operator.....	113.73			

SECTION III- List below all tradenames or unincorporated divisions that will be permitted to obligate this bond in the principal's name including their Customs Identification Number(s).³ (If more space is needed, use Section III(Continuation) on back of form.)

[illegible]

Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).

Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond.

<p>If the surety fails to appoint an agent under Title 6, United States Code, Section 7, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at:</p>	<p>Mailing Address Requested by the Surety</p>
--	--

PRINCIPAL ¹	Name and Address	Importer No. ¹	SEAL
		SIGNATURE ¹	
PRINCIPAL ²	Name and Address	Importer No. ²	SEAL
		SIGNATURE ²	
SURETY ^{1,2}	Name and Address ³	Surety No. ¹	SEAL
		SIGNATURE ⁴	
SURETY ^{1,2}	Name and Address ³	Surety No. ¹	SEAL
		SIGNATURE ⁴	

SURETY AGENTS	Name ^a	Identification No. ^b	Name ^a	Identification No. ^b

Customs Form 301 (111883)

Note: Turn carbons over before writing on back of form.

SECTION III (Continued)

Importer Number	Importer Name	Importer Number	Importer Name

WITNESSES

Two witnesses are required to authenticate the signature of any person who signs as an individual or as a partner; however, a witness may authenticate the signatures of both such non-corporate principals and sureties. No witness is needed to authenticate the signature of a corporate official or agent who signs for the corporation.

SIGNED, SEALED, and DELIVERED in the PRESENCE OF:

Name and Address of Witness for the Principal

Name and Address of Witness for the Surety

SIGNATURE:

SIGNATURE:

Name and Address of Witness for the Principal

Name and Address of Witness for the Surety

SIGNATURE:

SIGNATURE:

EXPLANATIONS AND FOOTNOTES

1. The Customs Bond Number is a control number assigned by Customs to the bond contract when the bond is approved by an authorized Customs official.
2. For all bond coverage available and the language of the bond conditions refer to Part 113, subpart G, Customs Regulations.
3. The Importer Number is the Customs identification number filed pursuant to section 24.5, Customs Regulations. When the Internal Revenue Service employer identification number is used the two-digit suffix code must be shown.
4. If the principal or surety is a corporation, the name of the State in which incorporated must be shown.
5. See witness requirement above.

6. Surety Name, if a corporation, shall be the company's name as it is spelled in the Surety Companies Annual List published in the Federal Register by the Department of the Treasury (Treasury Department Circular 570).
7. Surety Number is the three digit identification code assigned by Customs to a surety company at the time the surety company initially gives notice to Customs that the company will be writing Customs bonds.
8. Surety Agent is the individual granted a Corporate Surety Power of Attorney, CF 5297, by the surety company executing the bond.
9. Agent identification No. shall be the Individual's Social Security number as shown on the Corporate Surety Power of Attorney, CF 5297, filed by the surety granting such power of attorney.

Paperwork Reduction Act Notice. The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for this information to carry out the U.S. Customs Service laws of the United States. We need it to ensure that persons transacting business with Customs have the proper bond coverage to secure their transactions as required by law and regulation. Your response is required to enter into any transaction in which a bond is a prerequisite under the Tariff Act of 1930, as amended.

Privacy Act Statement. The following notice is given pursuant to section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a). Furnishing the information on this form, including the Social Security Number, is mandatory. The primary use of the Social Security Number is to verify, in the Customs Automated System, at the time an agent submits a Customs bond for approval that the individual was granted a Corporate Surety Power of Attorney by the surety company. Section 7 of Act of July 30, 1947, chapter 390, 61 Stat. 646, authorize the collection of this information.

Back of Customs Form 3810-110631

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1. THIS FORM MUST BE TYPED.
2. DO NOT ALTER THIS FORM.
3. ORIGINAL TO BE SUBMITTED TO
CUSTOMS. (See Option explained
in instruction no. 2.)

DEPARTMENT
UNITED STATES

CORPORATE SURETY

☐ GRANT (Instruction No. 3a.) ☐ CHANGE to Grant on file (Instruction No. 3b.) ☐ REVISE (Instruction No. 3c.)

NAME

GRANTEE: SOCIAL SECURITY NO.

GRANTOR: Surety Company's Corporate Name

District Code(s) for Customs district(s) in which authorized to do business

District	Limit	District	Limit	District	Limit

Grantor appoints the above-named person (Grantee) as its attorney in fact to bind the surety corporation to the same extent as if done by a regular power of attorney. This grant, or change to a grant, or change to a grant, provided the Customs Form 5297 is received at a district office 5 days before the close of business 5 working days after the date of receipt at the district office.

In witness whereof, the said Grantor, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal and attested by any two principal officers.

Date Attested

Name and Title

Use a facsimile of corporate seal, and not impression seal.

SIGNATURE

Appendix D

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DEPARTMENT OF THE TREASURY
STATES CUSTOMS SERVICE

SURETY POWER OF ATTORNEY

CUSTOMS USE ONLY
DATE RECEIVED

☐ **REVOCAION.** The below-described powers previously granted are hereby revoked.
(Instruction No. 3c.)

EFFECTIVE DATE

<input type="checkbox"/> This is a name change.	ADDRESS	<input type="checkbox"/> This is an address change.
---	---------	---

Surety No.	State Under Whose laws organized as a surety
------------	--

business and limit on any single obligation -OR- district(s) being added to the original grant:

Limit	District	Limit	District	Limit	District	Limit

any in fact to sign its name as surety to, and to execute, seal, and acknowledge any bond so as a regularly elected officer, limited only to the extent shown above as to Customs district and a grant on file, or revocation, as specified, shall become active on the effective date shown is days before the effective date shown; otherwise the specified action will become active at the district office.

Name and Title	Name and Title
SIGNATURE:	SIGNATURE:

CUSTOMS FORM 5207 (11-9-82)

CUSTOMS

U.S. DISTRICT COURT		
Anchorage, AK	31	Duluth, MN
Baltimore, MD	13	El Paso, TX
Boston, MA	04	Great Falls, MT
Bridgeport, CT	06	Honolulu, HI
Buffalo, NY	09	Houston-Galveston, TX
Charleston, SC	16	Laredo, TX
Cleveland, OH	41	Los Angeles, CA
Chicago, IL	39	Miami, FL
Dallas-Ft. Worth, TX	55	Milwaukee, WI
Detroit, MI	37	Mobile, AL
Detroit, MI	38	New York, NY

EXPLANATIONS:

1. A Corporate Surety Power of Attorney, Customs Form 5297, must be filed with the original. The power of attorney may be changed to change a name and/or address, and/or add districts to a power on file.
2. Form submission option: Each of the following conditions will require filing a separate form.
 - (a) If the district director permits the submission of the form to be made by mail.
 - (b) If the grantee desires to use the power of attorney at a location other than the Customs computer processing has been completed. For example, if the power of attorney is submitted with the original.
3. The box adjacent to the action executed on this Customs Form 5297 must be checked.
 - (a) If grant is checked: The information required to grant a power of attorney is:
 - District Information: Each district in which the power is granted must be listed. If the power is granted in every one of those districts, enter the word "ALL" on the first line.
 - Limit Information: (1) If any amount limit differs between any of the districts listed, (2) if all of the amount limits are the same, enter the amount limit on the first line under "Limit".
 - Penny limit published in the Treasury Department Circular 570, enter the amount limit on the first line under "Limit".
 - Surety: The number required is the 3 digit, identification code assigned to the surety company initially gives notice to Customs that the power of attorney is being used.
 - (b) To change a Corporate Surety Power of Attorney already on file, the grantee must file a new form. The new form must be filed EXCEPT changes to the name and/or address and the additional information that was submitted to establish the existing power on file. The district code(s) and related obligation limit(s) can be left blank. The power on file is required except only the new districts and related obligation limits do not have to be shown.
 - (c) If revocation is checked: A revocation divests the designated agent of the power of attorney. The revocation must be filed with the original. The information required to revoke the power of attorney are self-explanatory. The revocation must be filed with the original.

PRIVACY ACT STATEMENT: The following notice is given pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. This form, including the Social Security Number, is mandatory. The primary purpose of this form is to establish the existing power on file. The time an agent submits a Customs bond for approval that the individual is authorized to act as an agent for the U.S. Customs Service is required. Section 7 of Act of July 30, 1947, chapter 390, 61 Stat. 646, authorized the collection of this information.

APPENDIX D-2

U.S. DISTRICTS AND CODES

35	New Orleans, LA	20	San Francisco, CA	28
24	Nogales, AZ	26	San Juan, PR	49
33	Norfolk, VA	14	Savannah, GA	17
32	Ogdensburg, NY	07	St. Albans, VT	02
TX	Pembina, ND	34	St. Louis, MO	45
23	Philadelphia, PA	11	Seattle, WA	30
57	Portland, ME	01	Tampa, FL	18
52	Portland, OR	29	Virgin Islands, U.S.	51
36	Port Arthur, TX	21	Washington, DC	54
19	Providence, RI	05	Wilmington, NC	15
10	San Diego, CA	25		

must be executed for each of the following actions: grant an individual a power of attorney; or on file; revoke a power previously granted.

require filling a copy of the Customs Form 5297:

be made at any port within the district.

ation covered by the power, but other than the location where the power was submitted, before example: If both conditions are applicable, two copies of the Customs Form 5297 must be sub-

5297 must be checked. The effective date for the action checked should be shown.

of attorney are self-explanatory with the exception of the following:

nted must be shown except if the power both applies to all districts and the amount limit is the the first line under "District."

any of the districts in which the power is granted, individual amount limits must be shown for the same for each district in which the power is granted and the amounts equal the surety com- 0, enter the word "EQUAL" on the first line under "Limit." (3) If all of the amount limits left blank. (2) To add districts, the same information that was submitted to establish the exist- related obligation limits are necessary in the space provided.

de assigned by Customs Headquarters to a surety company, listed on Treasury Circular 570, at that the company will be writing Customs bonds.

in file, the previously filed power granted must be revoked and a new power (CF 5297) must be addition of districts to a power on file. (1) To make a name and/or address change, the same in- on file is required except the new name and/or address must be shown in the space provided left blank. (2) To add districts, the same information that was submitted to establish the exist- related obligation limits are necessary in the space provided.

d agent's or attorney's power of attorney in all districts. Except for the following, the Infor- planatory: The districts in which authorized to do business and the associated single obligation

uant to section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552e). Furnishing the information on the primary use of the Social Security Number is to verify, in the Customs Automated system, at individual was granted a Corporate Surety Power of Attorney by the Surety Company on the , authorizes the collection of this information.

CUSTOMS FORM 5297 (11/2003) (BACK)

CUSTOMS

FINAL REGULATORY FLEXIBILITY ANALYSIS ON AMENDMENTS TO REVISE THE CUSTOMS BOND SYSTEM

Introduction

The Customs Service has proposed an extensive revision of its bond structure in order to consolidate and simplify the number of bond forms, facilitate the establishment of an efficient computerized bond control system, and simplify transactions between Customs and the importing community.

The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared on proposed regulations unless it is determined that the regulations will not have a "significant economic impact on a substantial number of small entries." Given the number of brokers, importers, and entities subject to the RFA, and since the proposed amendments (if implemented) may result in an economic impact of some significance on these entities, this final regulatory flexibility analysis has been prepared.

Objectives and Legal Basis of the Proposed Rule

The proposal's objective is to reduce the cost of bonding to the importing community and to improve Customs control over bonding, which includes improvements to facilitate the enforcement of bond provisions and to reduce the cost of associated functions.

The legal basis or authority for the proposed changes is R.S. 251, as amended (19 U.S.C. 66), and Section 623, as amended, 624, 46 Stat. 759 (19 U.S.C. 1624).

Estimated Number of Small Entities Affected

The proposed amendments would affect most small entities in the importing community. This includes 900-1,000 customhouse brokers, the multitude of importers, and other entities such as surety companies, warehouse operators, bonded carriers, international carriers, cartmen/lightermen, foreign trade zone operators, and container station operators.

Impact of the Proposed Amendments on Small Entities in the Importing Community

No response was received to Customs invitation for suggestions to provide further savings for small entities in the importing community. Also, no comments were received which identified any proposed amendment aspects which would adversely impact small businesses.

The Customs Service believes that the proposed amendments will in general be *beneficial* to the importing community via the consolidation of bond forms, the simplification of transactions between Customs and the importing community, the facilitation of the establishment of an efficient computerized bond control system, the

general streamlining of procedures, and the overall reduced cost of bonding. Several of the major beneficial factors are reviewed below.

Selected Cost Reduction Measures of the Proposed Amendments

The proposed amendments will reduce costs and streamline procedures by consolidating and reducing the number of different bond forms currently in use (approximately 50) to one standard form. Once filed, the agreements on the form will automatically remain in effect until Customs is advised otherwise. Moreover, the number of bond forms that must be filed for control purposes under the current system will be reduced. Also, under existing regulations some bond forms (e.g., CF 7553, ID and Consumption Entry Bond) must be filed at each port, unless exempted; such an exemption requires filing copies of an approved bond at all the ports where a firm will engage in business. Under the proposed change one bond will suffice for business transacted at all ports.

The language of the bond conditions will also be simplified and all conditions of bond agreements will be reflected in one location in the Regulations.

This will tend to reduce cost, correspondence and time spent on inquiries, disputes, counterclaims, etc., which are caused by difficulties in the interpretation of current bond language.

Bond coverage requirements will be more flexible than the current bond contract forms. As a consequence, a principal on a bond will be able to receive Customs service in a wider geographic area (nation-wide as opposed to district or port level) when necessary, without being forced to purchase another bond. This will especially benefit small entities. The following illustrates this flexibility: if a small importing firm only conducts business in one port of entry and an occasion arises where the merchandise is shipped to another port, under the change proposed the bond filed would cover that transaction rather than requiring the filing of another bond or becoming involved with in-bond shipment requirements.

Other cost reduction and facilitation measures resulting from the proposed amendments include the following selected examples: (1) Importers entering merchandise for consumption or under Immediate Delivery privileges currently, for control purposes, must file a bond at each port where entry of merchandise will be accomplished. Under the control envisioned in the proposed change, only one bond will be required which would be applicable to all ports. (2) Currently, many term bond contracts are valid for a period of 1 year. Thus, an individual or firm must file a new bond form each year, with all the contractual formalities, time, and cost that entails. However, under the proposed bond renewal feature, once a term bond is filed it will be automatically renewed unless Customs is advised otherwise by the principal or surety. Thus, all the annual contractual formalities will no longer be required and Customs will not have to undergo the concomitant timely and costly

bond approval process. (3) When a small firm is engaged in a business which involves filing dutiable consumption as well as warehouse entries and its annual, aggregate duty paid or accrued is less than \$100,000 (minimum General Term Bond amount), the bond that would normally be purchased for such repetitive business in these circumstances under the current bond structure is the CF 7553, ID and Consumption Entry Bond. That bond covers all consumption entries filed during a 1 year period. However, for each warehouse entry filed, a CF 7555, Warehouse Entry Bond is required. Under the proposed change, a small firm, under these same circumstances, will be able to purchase one bond which will cover consumption and warehouse entries.

Alternatives Considered

The proposed amendments would comprehensively revise Customs bond structure and are intended to help minimize costs to both small and large entities in the importing community.

Indeed, a number of alternatives suggested in the amendments to the ANPR have previously been incorporated in order to minimize any economic burden, e.g., providing a 12-month transition period to implement the new bond structure. Based on comments received pertinent to the NPRM, further alternatives have been incorporated into this final notice, e.g., Customs agreed with the majority of commenters and provided for a delayed effective date of 120 days (rather than 60 days) after the final rule is published. Two forms associated with bonds (CF 3171 and term Special Immediate Delivery Permit) were changed from annually-refiled forms to continuous good-until-terminated forms.

19 CFR Part 134

(T.D. 84-214)

Country of Origin Marking of Imported Rotary Metal Cutting Tools: Change of Practice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final change of practice.

SUMMARY: This document gives notice that Customs is modifying its current practice of exempting imported rotary metal cutting tools from being individually marked with the country of origin provided such tools reach the ultimate purchaser in the U.S. in individual tubes or containers which are properly marked.

After reviewing the comments received in response to the notice proposing this change, Customs will now limit the exemption to twist drill sets imported in sealed index storage boxes or in retail

blister packs which are designed for retail marketing and in which the majority of twist drills in the set are incapable of being individually marked. Twist drills having a diameter of *less than* three-sixteenths ($\frac{3}{16}$) of an inch shall be considered incapable of being individually marked.

EFFECTIVE DATE: January 16, 1985.

FOR FURTHER INFORMATION CONTACT: Harold Loring, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304, Tariff Act of 1930, as amended, (19 U.S.C. 1304), provides that every article of foreign origin or its container imported into the U.S. shall be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the U.S. unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304.

By Treasury Decision 74-122, published in the Federal Register on April 15, 1974 (39 FR 13538), Customs required that imported rotary metal cutting tools (i.e., interchangeable tools for hand or machine tools such as drill bits and twist drills of the kind classifiable in items 649.43, 649.44, and 649.46, Tariff Schedules of the United States; 19 U.S.C. 1202) must be marked by means of die stamping in a contrasting color, by raised lettering, by engraving, or by some other method of producing a legible, conspicuous, and permanent mark to clearly indicate the country of origin. The decision allowed for an exception, however, i.e., if the containers or individual tubes of the tools were properly marked and would reach the ultimate purchaser with the tool contained therein, then the tool itself could be exempted from individual marking.

Two trade associations representing the domestic industry have requested that Customs abolish this exception and require that each metal tool be individually marked. It is suggested that only tools too small to be marked be exempted from marking and that certification requirements be applied in those cases. This request is based both on the contention that there exists a consumer preference for domestic tools and on submitted proof that unmarked tools are reaching ultimate purchasers with their foreign source undisclosed. The domestic industry claims that the country of origin marking requirements of these tools are circumvented by importers not selling directly to the ultimate purchasers, but rather to distributors who often remove the tools from their individual containers or tubes. In some cases it is alleged that these tools are repackaged in order to conceal the country of origin from the ultimate

purchaser. Concealing the tool's country of origin defeats the legislative purpose of 19 U.S.C. 1304 which is to enable the ultimate purchaser of the goods to decide for himself whether or not to buy foreign-made articles. In view of the concerns of the domestic industry, Customs, by a notice published in the Federal Register on April 25, 1984 (49 FR 17772), determined that a review of this matter was warranted and invited public comments on it before any change was made.

DISCUSSION OF COMMENTS

Eighty-two comments were received in response to the notice; seventy-eight favored the change of practice, four opposed. Commenters supporting the change of practice do not disagree entirely with T.D. 74-122. They agree that rotary metal cutting tools should be marked in a permanent manner. However, the majority of commenters object to an exception being made for tools imported in marked containers. These commenters allege that domestic industry is harmed by the large number of rotary metal cutting tools which reach ultimate purchasers without any marking, having been separated from their containers in distribution. Aware of a consumer preference for domestic tools, it is alleged that distributors take the unmarked tools from their marked containers and dispose of the containers. It is claimed that some distributors repackage the unmarked tools in private brand labelled packages. Domestic industry, favoring the abolition of the exception, believes that foreign-made rotary metal cutting tools are inferior and when product failure occurs, domestic industry is held accountable when the consumer, seeing no foreign identification, erroneously believes the failed product to be American-made. Commenters point out that foreign governments subsidize foreign tool manufacturers and that the U.S. government should protect domestic industry by requiring foreign tools to be marked. Domestic industry claims it needs protection because of the foreign manufacturers' attempt to copy U.S. products, causing confusion in the market place. The domestic cutting tool industry states that it is essential for U.S. defense needs, and demands government protection, at least to the extent of requiring foreign tools to be identified.

Commenters favoring the change in practice also point out that individual tool marking is not expensive and can be performed at the same time the other tool markings are made, *i.e.*, size markings. If a permanent mark is made in the "holding" area of the tool, then no injury to the tool will occur. Thus, these commenters believe that individual tool marking will burden only those who seek to evade the marking statute.

From a legal point of view, commenters favoring the change note that T.D. 74-122 granted the exception to individual tool marking pursuant to section 134.32(d), Customs Regulations, which excepts articles "for which the marking of the containers will reasonably

indicate the origin of the articles." Because the containers are separated from the tools during distribution, these commenters argue that the exception can no longer be justified.

Commenters in opposition to the change of practice argue that domestic industry overstates the degree to which distribution channels cause a tool to become separated from its marked container. In most cases, these commenters contend, it is too expensive to remove cutting tools from their containers, i.e., the value of concealing the foreign source is less than the cost of removing the product from its package. Therefore, the marked package is likely to reach the ultimate purchaser unopened. In addition, these commenters do not believe that Customs has the personnel to enforce a rule which would require that each tool be marked—for to do so would require Customs to remove tools from their containers for inspection. Many rotary metal cutting tools, such as twist drills, are very small and, these commenters suggest, markings would be very difficult to see. It is alleged that Customs would be bowing to protectionist pressure in changing the practice. It is argued that country of origin marking of individual tools would increase the cost of the tools. This is anti-competitive and is said to encourage U.S. inefficiency. Another commenter believes that the requirement for individual tool marking would cause unnecessary delay in the flow of commerce, i.e., both Customs and importers would spend a great deal of time in checking for individual marking.

One commenter who imports rotary metal cutting tools believes that the exception should remain for twist drill sets packaged in expensive index boxes which are certain to remain with the product through distribution and reach the ultimate purchaser. This commenter agrees that twist drills imported in open stock sizes in individual envelopes or 5-10 units of one size to an envelope are more likely to be repackaged.

To the contrary, domestic industry argues that repackaging is not expensive and this is proved by the current evasive practices of distributors and importers. Commenters, favoring the change, believe that no great delay in the flow of commerce will occur if normal sampling procedures are used. They say that the change will be simple to enforce because Customs will not have to follow tools into commerce to detect violations. Individual tool marking will permit determinations to be made at time of entry. Finally, if foreign manufacturers will be marking tools individually in any event, then it would be simple to mark every tool, permitting no exceptions notwithstanding how elaborate the packaging.

DECISION

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin *or its container* must be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin to an ulti-

mate purchaser in the U.S. Container marking will suffice provided the container, properly marked, is virtually certain to reach the ultimate purchaser unopened. Thus, 19 U.S.C. 1304(a)(3)(D), as implemented by section 134.32(d), Customs Regulations, excepts an article from individual country of origin marking if marking the container will reasonably indicate the origin of the article. In accordance with these principles, T.D. 74-122 ruled on the proper marking of individual rotary metal cutting tools, but provided for an exception from individual marking requirements in the case of tools imported in individual tubes or containers which are marked to indicate the origin of the tools inside.

Customs has reviewed domestic industry's petition, the comments received to the proposed change of practice, and the available evidence, and concludes that the exception created in T.D. 74-122 to individual tool marking has been abused.

Although we adhere to T.D. 74-122 (insofar as it holds that imported rotary metal cutting tools must be marked by means of die stamping in a contrasting color, by raised lettering, by engraving, or by some other permanent method of marking) we are making the following modifications to the exception created therein:

Rotary metal cutting tools may not be excepted from individual country of origin marking merely because they are imported in individual tubes or containers that are marked, *unless* it can be shown to the satisfaction of Customs officers at the port of entry that the containers are of a kind that are virtually certain to reach ultimate purchasers unopened, *i.e.*, twist drill sets imported in sealed index storage boxes or in retail blister packs which are designed for retail marketing and in which the majority of twist drills in the set are incapable of being individually marked.

Rotary metal cutting tools imported in individual tubes or containers of cardboard or plastic, must be individually marked in accordance with T.D. 74-122, notwithstanding that the container is marked.

In accordance with ORR Ruling 639-69, dated January 2, 1970, twist drills having a diameter *less than* three-sixteenths ($\frac{3}{16}$) of an inch shall be considered incapable of being marked. When these twist drills are imported in bulk, the containers shall be marked, and the importer shall be subject to the certification requirements of section 134.25, Customs Regulations (19 CFR 134.25), as amended by T.D. 84-155, published in the Federal Register on July 26, 1983 (48 FR 33860). Section 134.25 requires that if articles incapable of being marked are repackaged, the container must be marked to indicate the country of origin of the repackaged contents by either the importer who repackages the articles, or the purchaser or transferee of the articles who does the repackaging. At the time of entry of the articles, the importer must certify to the district director that the repackaged containers will be marked or that the im-

porter will notify the purchaser or transferee of the marking requirement.

The basis for allowing the exception to continue in the case of certain twist drill sets rests in the substantial nature of various retail packages in which these twist drill sets are sold. The packaging often contains retail information and compartmentalized holders meant to attract consumers and retain their usefulness as holders even after purchase. The cost of removing the packaging would outweigh the value of concealing the country of origin marking. This cannot be said of larger twist drills imported in individual tubes or packets where the quality of such packaging is insubstantial (*i.e.*, cardboard or plastic) and small in value in comparison with the drill inside. It is noted that, in the case of twist drill sets, the majority of twist drills are under $\frac{3}{16}$ -inch and incapable of being legibly marked. For these sets, the exception should continue.

Whenever a container bears a U.S. address, or the words "United States" or "American" or "U.S.A.", then the country of origin preceded by the words "Made in" or "Product of" must appear in close proximity, and in a size comparable, to any U.S. address, location, notation, or reference, whether or not the article inside is marked. See section 134.46, Customs Regulations (19 CFR 134.36).

In the case of individual rotary cutting tool marking, adhesive labels or slip-on labels will continue to be considered inadequate for country of origin marking purposes in accordance with T.D. 74-122 and T.D. 70-27(1), dated December 23, 1969.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 134

Customs duties and inspection, imports, labeling, packaging and containers.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 1, 1984.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, October 18, 1984 (49 FR 40802)]

ERRATUM

In CUSTOMS BULLETIN, Vol. 18, No. 32, dated August 8, 1984, in T.D. 84-153, the name of the principal Arkansas-Best Freight System, Inc., should be corrected to: ABF Freight Systems, Inc.

U.S. Customs Service

Proposed Rulemaking

19 CFR PART 151

Proposed Customs Regulations Amendments Relating To Approval of Commercial Gaugers and Accreditation of Commercial Testing Laboratories

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide procedures for Customs approval of commercial gaugers (including public gaugers) who perform weighing, measuring, and/or gauging of certain commodities. The results of these activities, which are performed by non-governmental businesses, may be used by Customs in determining the proper rate of duty for the commodities. The document also proposes a procedure for Customs accreditation of commercial testing laboratories. The current regulations contain no provision for assessing the technical soundness of commercial testing laboratories not operated by a public gauger. Furthermore, the term "public gauger", which is found in the current regulations, is primarily associated with petroleum and there are other commodities for which Customs requires both quantity measurements and laboratory testing. The proposed amendments would correct these current deficiencies and provide for future needs.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Written comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503, as well as to the Commissioner of Customs, as noted above.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain or Carolyn E. Damon, Technical Services Division, Room 7113, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2446).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public gaugers are commercial organizations or individuals who perform certain activities, such as measuring the density, to obtain quantity measurements of imported petroleum. Once this information is obtained, it may be used by Customs in determining the proper rate of duty for the petroleum.

The term "public gauger" is associated primarily with petroleum. There are other commodities, however, for which examination, measurement, gauging, or sampling is required by Customs. The commercial organizations or individuals who perform these activities for commodities other than petroleum are known as "commercial gaugers". Public gaugers are a type of commercial gauger and the term "commercial gauger" is understood to include public gaugers.

Section 151.43, Customs Regulations (19 CFR 151.43), currently provides that a district director of Customs may accept reports on imported petroleum from public gaugers approved by the Commissioner of Customs. In addition, Customs Delegation Order No. 64, published as T.D. 82-142 in the Federal Register on August 13, 1982 (47 FR 35391), delegated authority to the Director of the Technical Services Division at Customs Headquarters in Washington, D.C., to conduct on-site inspections of commercial laboratories operated by Customs-approved public gaugers. However, the current regulations contain no provision for assessing the technical soundness of commercial testing laboratories not operated by a public gauger. Furthermore, the term "public gauger", which is found in section 151.43, is primarily associated with petroleum and there are other commodities for which Customs requires both quantity measurements and laboratory testing. To correct these current deficiencies and to provide for future needs, it is proposed to amend the regulations to provide a general procedure for both the approval of commercial gaugers (including public gaugers) who perform weighing, measuring, and/or gauging, and for the accreditation of commercial testing laboratories not operated by a public gauger.

EXECUTIVE ORDER 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to the proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

This document is subject to section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Public comments relating to the information collection aspects of the proposal should be addressed to the Office of Management and Budget and to Customs at the addresses set forth in the ADDRESS portion of this document.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended, 77A Stat. 14, sec. 499, 46 Stat. 728, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1202 (Gen Hdnotes 1-6, 11, 12, Tariff Schedules of the United States) 1499, 1624).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 151

Customs duties and inspection, imports, chemicals, flammable materials, petroleum, sugar.

PROPOSED CUSTOMS REGULATIONS AMENDMENTS

It is proposed to amend Part 151, Customs Regulations (19 CFR Part 151), in the following manner:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF
MERCHANDISE

1. It is proposed to revise § 151.10 to read as follows:

§ 151.10 Sampling.

When deemed necessary, the district director may obtain samples of merchandise for appraisement, classification, or other official Customs purposes. Representative samples shall be taken by an authorized Customs officer or by a public gauger or commercial gauger approved by Customs as provided for in § 151.13. All samples shall be properly marked to insure identification and retained according to established policies.

2. It is proposed to amend Part 151 by adding new §§ 151.13 and 151.14 to Subpart A to read as follows:

§ 151.13 Commercial gaugers.

Commercial gaugers are commercial organizations and individuals who perform examinations, measurements, gauging, or sampling required by Customs for certain commodities. Public gaugers, which deal primarily with petroleum, are a type of commercial gauger and the term "commercial gauger," as used in Part 151, includes public gaugers. Subject to the conditions listed in this section, the results of the activities performed by commercial gaugers on designated commodities may be accepted for Customs purposes. Laboratories operated by commercial gaugers are subject to the controls listed in § 151.14.

(a) *Acceptance of reports.* Subject to the controls listed in this section, the district director may accept, for Customs purposes, the reports of commercial gaugers approved by Customs in accordance with this section, provided that:

- (1) Customs officers have exercised the supervision required by any section of this part, and

- (2) Customs is not aware of any evidence that the commercial gauger has failed to comply with the provisions of this section.

(b) *Approval of commercial gaugers.* Commercial gaugers seeking approval shall send an application to the Commissioner of Customs, U.S. Customs Service, Attention: Director, Technical Services Division, Washington, D.C. 20229. Applications, which may be in the form of a letter, shall contain or be accompanied by the following:

- (1) The applicant's name and address, including the addresses of the principal place of business and subsidiary offices, if any;

- (2) The service(s) and commodity(ies) for which the applicant is seeking approval;

(3) Detailed statements of ownership and any partnerships, affiliations, or parent-subsidiary relationship with organizations such as, but not limited to, importers, producers, refiners, etc., of the commodity(ies) for which approval is being sought; brokers; commercial laboratories; commercial sampling organizations; etc.;

(4) A statement of financial condition;

(5) If a corporation, a copy of its articles of incorporation and a list of its officers and directors;

(6) A detailed statement of the qualifications of each professional or technical employee; and

(7) A written agreement in the following form to avoid conflict-of-interest situations and to comply with requirements prescribed by Customs:

COMMERCIAL GAUGER AGREEMENT

As conditions for the approval of this application, I agree:

—To have no financial interest in, or other connection with, any business or other activity which might be considered to affect the unbiased performance of my duties as a commercial gauger for Customs purposes, in accordance with the standards and procedures approved by the Commissioners of Customs. I understand that this does not apply to the acceptance of the usual fees for professional services.

—To comply with the requirements of Part 151, Customs Regulations (19 CFR Part 151), and with any procedures prescribed by the Commissioner, or the Director, Technical Services Division, U.S. Customs Service, pursuant to that part.

—To promptly notify the Commissioner of any change of name, address, ownership, partnership, affiliation, etc., or financial condition, and if a corporation, of any change in its articles of incorporation, officers, directors, or parent-subsidiary relationship.

—To immediately notify the Commissioner of any attempt to influence, impede, or coerce me in the performance of any aspect of my duties.

—To furnish a bond, in the amount of \$10,000, to ensure that these services will be performed in conformance with approved standards and procedures, and with such procedures as may be prescribed by the Director, Technical Services Division, U.S. Customs Service, pursuant to paragraph (g) of this section.

(c) *Dual Approval.* (1) Applications for the accreditation of commercial testing laboratories operated by commercial gaugers seeking Customs approval under the procedures outlined in this section may be submitted concurrently providing they fulfill the requirements described for such laboratories in § 151.14. Public gaugers having Customs approval on the date of enactment of these regulations need not reapply and may continue to gauge petroleum and petroleum products under the conditions described in this section.

(2) If a district director has been accepting quantity or test reports from Customs-approved public gaugers for commodities other than petroleum, or from non-approved commercial gaugers for any commodity, he may continue to do so for a period not to exceed 6 months from the effective date of these regulations. In order to be allowed to provide such reports to Customs after the 6-month grace period, a gauger must apply for and receive Customs approval within this 6-month period in accordance with the procedure prescribed in this section.

(d) *Investigation of applicant.* The Commissioner of Customs shall direct the Technical Services Division to determine the applicant's competence, and shall direct the Office of Investigations to determine the applicant's fitness and reputation and to verify the statements made in the application.

(e) *Notice of approval, disapproval, suspension, or revocation.* When the investigations have been completed, the Director, Technical Services Division, will either advise the applicant that his application has been approved or will state the reasons for disapproval. The Commissioner of Customs may suspend or revoke such approvals at any time for failure to comply with any provision in this section, and may assess liquidated damages under the commercial gauger bond. Notices of approval and of suspension or revocation shall be published from time to time in the CUSTOMS BULLETIN.

(f) *Operational requirements.* To be approved for Customs purposes, a commercial gauger shall conform to the following requirements:

(1) *Equipment.* All equipment, accessories, and other devices used shall be maintained in first class condition, and shall be of a type prescribed by published industry standards such as, but not limited to, those of the American Society for Testing and Materials (ASTM), the American Petroleum Institute (API), or the American National Standards Institute (ANSI), as appropriate, or shall have performance characteristics equal to or superior to those required to conduct analyses described in such standards.

(2) *Procedures.* All procedures shall be in conformance with published industry standards, such as those of the ASTM, API, or International Commission for Uniform Methods of Sugar Analysis (ICUMSA), and shall conform to such specific procedures as the Director, Technical Services Division, may require in accordance with paragraph (g) of this section.

(3) *Qualifications.* Each commercial gauger and each other person authorized to sign gauging reports shall furnish Customs with a written certificate that he has a minimum of 6 months training and experience in performing the same service(s) with the same commodity(ies).

(4) *Results.* The commercial gauger shall investigate promptly any apparent irregularities, procedural difficulties, or indications of systematic bias called to his attention by either the district di-

rector or the Director, Technical Services Division, or of which he otherwise may become aware, and shall take corrective measures immediately. Both the district director and the Director, Technical Services Division, shall be promptly notified of such matters and of any actions taken.

(g) *Procedures prescribed by the Director, Technical Services Division.* The Director, Technical Services Division, is authorized to prescribe general or specific procedures to be followed by each approved commercial gauger at each location.

(h) *Recordkeeping requirements.* Records of the commercial gauger pertaining to work performed for acceptance by Customs shall be of the type normally kept in the ordinary course of business. These shall be maintained for 5 years from the date of entry of the merchandise in accordance with §§ 162.1a and 162.1c of this chapter.

(i) *Verification requirement.*

(1) *Compliance.* To ensure compliance with the provisions of this section and accuracy and uniformity in the information submitted by commercial gaugers, the Director, Technical Services Division, is authorized to conduct:

- (i) on-site inspections;
- (ii) integrity checks;
- (iii) reviews of any records described above.

(2) *Resolution of discrepancies.* Any discrepancy between the reports by the commercial gauger and the quantity found by Customs, in excess of any tolerance published in these regulations, shall be resolved in favor of Customs unless the commercial gauger produces clear and convincing evidence that Customs is in error.

(3) *Sanctions.* If a commercial gauger's reports are repeatedly inaccurate to a significant degree, the commercial gauger's approval may be suspended or revoked in accordance with paragraph (j) of this section, or liquidated damages may be assessed under the terms of the commercial gauger's bond.

(j) *Suspension or revocation of Customs approval.*

(1) *Grounds.* Failure to comply with the provisions of this section may be grounds for suspension or revocation of Customs approval of a commercial gauger.

(2) *Notice.* The Director, Technical Services Division, shall give written notice of a proposed suspension or revocation of approval to the commercial gauger. The notice shall give specific grounds for the proposed action and shall become final unless the commercial gauger files a written reply in accordance with paragraph (3) of this subsection.

(3) *Reply.* Within 30 days of receipt of the notice, the commercial gauger may file a written reply with the Director, Technical Services Division. This reply may contain: (i) answers to the allegations, (ii) rebuttal evidence, and (iii) a request to make an oral presenta-

tion to the Director, Technical Services Division, or his designee, as to why this action should not be taken.

(4) *Action on reply.* If the Director, Technical Services Division, is persuaded by the commercial gauger's reply or oral presentation, he shall notify the commercial gauger and the case shall be closed. If not, the Director, Technical Services Division, shall suspend or revoke the commercial gauger's approval and shall notify the commercial gauger that he may request review of this action by the Commissioner of Customs in accordance with paragraph (6) of this subsection. The Director, Technical Services Division, shall forward an information copy of his actions to the district director(s) involved.

(5) *Stay of suspension or revocation.* An adverse decision by the Director, Technical Services Division, shall not become final until the time for requesting a review by the Commissioner of Customs has passed and no request has been filed by the commercial gauger, or the decision has been upheld.

(6) *Review of suspension or revocation.* The commercial gauger may petition the Commissioner of Customs to review an adverse decision by the Director, Technical Services Division. Such petitions shall be filed, in duplicate, with the Director, Technical Services Division, within 30 days of the date of the action, and should clearly state the reasons why such action should not become final. The Commissioner, or his designee, shall review the petition and shall forward his written decision to the Director, Technical Services Division, for delivery to the commercial gauger.

(7) *Publication.* Notice of any final action by the Director, Technical Services Division, or the Commissioner of Customs suspending or revoking the approval of a commercial gauger shall be published in the Federal Register and the CUSTOMS BULLETIN.

(k) *Supplemental applications.* A Customs-approved commercial gauger may apply to extend his approval to additional services and/or commodities by submission of a supplemental application. Supplemental applications, which may be submitted at any time, need only provide the information described in paragraphs (b), (1), (2), and (6), of this section.

(1) *Expense incurred by utilization of Customs-approved commercial gaugers.* No expense incurred by an importer's utilization of a Customs-approved commercial gauger shall be borne by the Government.

§ 151.14 Commercial testing laboratories.

(a) *Acceptance of laboratory analysis reports.* Subject to the controls outlined in this section, the district director may accept, for Customs purposes, laboratory analysis reports by Customs-accredited commercial testing laboratories (including those operated by Customs-approved commercial gaugers) for the following commodities and their respective characteristics by the indicated methods. However, the samples shall have been taken by a Customs officer,

or an approved commercial gauger (see § 151.13), or shall have been certified, by the importer as being representative of the importation, and there must be no evidence that the commercial laboratory failed to comply with any provision of this section. The characteristics and the commodities are as follows:

(1) American Petroleum Institute (API) gravity, the amount of bottom sediment and water (BS&W), the antiknock index, and distillation characteristics for petroleum and petroleum products by the most recent applicable American Society for Testing and Materials (ASTM) methods.

(2) Sugar degrees determined by the polariscopic test, percent soluble nonsugar solids, percent total sugars, and weight per gallon in air at 60°F for sugars, sirups, and molasses by the most recent official International Commission for Uniform Methods of Sugar Analysis (ICUMSA) methods.

(b) *Accreditation of commercial testing laboratories.* Commercial testing laboratories (including those operated by commercial gaugers) seeking accreditation shall send an application to the Commissioner of Customs, U.S. Customs Service, Attention: Director, Technical Services Division, Washington, D.C. 20229. (Laboratories which were operated by public gaugers having Customs approval on the date of enactment of these regulations shall be recognized as Customs-accredited laboratories for the analysis of petroleum and petroleum products as described in paragraph (a)(1) of this section, and shall be subject to the conditions described in this section.) Applications, which may be in the form of a letter, shall contain or be accompanied by the following:

(1) The applicant's name and address, including the addresses of the principal place of business and subsidiary offices, if any;

(2) The commodity(ies), test(s), and corresponding test method(s) for which the applicant is seeking approval. (Note: each test method should be completely documented by name, designation, and literature reference.)

(3) Detailed statements of ownership and any partnerships, affiliations, or parent-subsidiary relationships with organizations such as, but not limited to, importers, producers, or refiners etc., of the commodity(ies) for which approval is being sought; brokers; commercial laboratories; commercial sampling organizations; commercial gaugers; etc.;

(4) A statement of financial condition;

(5) If a corporation, a copy of its articles of incorporation and a list of its officers and directors;

(6) A detailed statement of the qualifications of each professional or technical employee and a complete description of all laboratory facilities and equipment; and

(7) A written agreement in the following form to avoid conflict-of-interest situations and to comply with operating requirements prescribed by Customs:

COMMERCIAL TESTING LABORATORY AGREEMENT

As conditions for the approval of this application, I agree:

—To have no financial interest in, or other connection with, any business or other activity which might be considered to affect the unbiased performance of my duties as a commercial laboratory performing testing for Customs purposes, in accordance with the standards and procedures approved by the Commissioner of Customs. I understand that this does not apply to the acceptance of the usual fees for professional services.

—To comply with the requirements of Part 151, Customs Regulations (19 CFR Part 151), and with any procedures prescribed by the Commissioner or the Director, Technical Services Division, pursuant to that part.

—To promptly notify the Commissioner of any change of name, address, ownership, partnership, affiliation, etc., or financial condition, and, if a corporation, of incorporation, of any change in its articles of incorporation, officers, directors, or parent-subsidiary relationship.

—To immediately notify the Commissioner of any attempt to influence, impede, or coerce me or my employees in the performance of any aspect of my duties.

—To promptly notify the Director, Technical Services Division, of any significant changes in the professional staff, physical facilities, instruments, or test methods in use in the laboratory.

—To furnish a bond, in the amount of \$10,000, to ensure that the laboratory tests and associated procedures will be in conformance with industry-recognized standards and with such procedures as may be specifically prescribed by the Director, Technical Services Division, pursuant to paragraph (f) of this section.

(c) *Investigation of applicant.* The Commissioner of Customs shall direct the Technical Services Division to determine the applicant's professional competence, and shall direct the Office of Investigations to determine the applicant's fitness and reputation and to verify the statements made in the application.

(d) *Notice of approval, disapproval, suspension, or revocation.* When the investigations have been completed, the Director, Technical Services Division, will either advise the applicant that his laboratory has been granted accreditation or will state the reasons for denial. The Commissioner of Customs may suspend or revoke accreditation of a laboratory at any time for failure to comply with any provision in this section, and may assess liquidated damages under the commercial laboratory's bond. Notices of accreditation and of suspension or revocation of accreditation shall be published from time to time in the CUSTOMS BULLETIN.

(e) *Operational requirements.* To be accredited for Customs purposes, a commercial testing laboratory's operations shall conform to the following requirements:

(1) *Equipment.* All analytical instruments, accessories, and other equipment used by the laboratory will be maintained in first class condition. For all major instruments, including analytical balances, a log book shall be kept. All instruments, accessories, and other equipment shall be of a type prescribed by published industry standards such as those of the ASTM, API, or American National Standards Institute (ANSI), as appropriate, or shall have performance characteristics equal to or superior to those required to conduct analyses described in such standards.

(2) *Procedures.* Each specified ASTM or ICUMSA method, shall be reviewed and approved for use by the Director, Technical Services Division [see § 151.14(b)(2)]. Other technical procedures shall be in conformance with published industry standards, such as those of the ASTM or the API, and all laboratory operations, including analytical methods and technical procedures, shall conform to such specific procedures as the Director, Technical Services Division, may require in accordance with paragraph (f) of this section.

(3) *Qualifications.* Each professional employee authorized to sign or approve laboratory analysis reports shall have a minimum of a bachelor's degree in the physical sciences or engineering and at least 2 years of full-time professional experience in the analysis of the product(s) the laboratory is accredited to test. Each employee authorized to assist in laboratory analyses to be used for Customs purposes shall have a minimum of 2 years of general experience and 2 years of specialized experience which includes at least 1 year of full-time experience in an analytical laboratory, 6 months of which shall have been spent in the analysis of the designated product(s). Post high school education in an accredited college, junior college, or technical institute may be substituted, year for year, for the required general experience and for 1 year of the specialized experience, providing each substituted education year included at least 12 semester hours in any combination of courses such as physical science, engineering, or any branch of mathematics except financial and commercial mathematics.

(4) *Results.* The director of the commercial testing laboratory shall investigate promptly any apparent irregularities, procedural difficulties, or indications of systematic bias in analytical results; shall take corrective measures immediately; and shall promptly notify both the district director(s) and the Director, Technical Services Division, of such matters and of any actions taken.

(f) *Procedures prescribed by the Director, Technical Services Division.* The Director, Technical Services Division, is authorized to prescribe general or specific procedures to be followed by each accredited commercial testing laboratory.

(g) *Recordkeeping requirements.* The commercial testing laboratory shall maintain records of the type normally kept in the ordinary course of business and also those described below for 5 years from the date of entry of the merchandise in accordance with §§ 162.1a

and 162.1c of this chapter. Except as otherwise noted, the records described below shall be kept in hardbound (not loose-leaf) books with consecutively numbered pages and all entries shall be in ink.

(1) *Sample log book.* Each page must be "approved" by the laboratory director or his designee within 5 days of first entry. An electronic Sample Log Book is permitted in lieu of a hardbound book, but a complete "hard-copy" record must be made, approved as above, and maintained as an official record. Samples for Customs purposes shall be separately recorded in a Sample Log Book that is used exclusively for this purpose. At a minimum, each entry in the Sample Log Book must contain the following information:

- (i) unique identifying number for each sample (which must also be marked on the sample itself);
- (ii) date sample received;
- (iii) description of sample, including type of product, marks or other unique identifying characteristics on the sample container, etc.;
- (iv) Customs entry date, entry number, and port of entry;
- (v) name of importer, carrier, and broker;
- (vi) name of manufacturer, exporter (if different), and country-of-origin;
- (vii) source of sample (such as name of sampling officer, commercial gauger, registered mail number, etc);
- (viii) date sample reported.

(2) *Major instrument log book.* [See paragraph (e)(1) of this section] The major instrument log must show, at a minimum, the dates and circumstances of all instances of servicing, upgrading, malfunction, recalibration, or any other action which might affect analytical results. Each entry must be initialed and dated by the laboratory director or his designee.

(3) *Analytical procedures book.* This may be loose-leaf, and should contain all analytical procedures, calibration methods, etc., as provided in paragraph (e)(2) of this section. Each analysis procedure must have a sheet showing, by date and signature, that each professional or technical employee has "read and understood" the procedure.

(4) *Laboratory notebook.* A laboratory notebook must be assigned to each professional or technical employee, and the record of such assignments is itself a "record" subject to the requirements of this section. The notebook must contain all information or data (such as sample weights, temperatures, references to filed spectra, chromatograms, photographs, etc.) associated with the analysis, and each entry must bear the number of the sample to which it pertains. Each page of the laboratory notebook must be dated and initialed as "read and understood" by the employee's immediate supervisor within 5 days of entry.

(h) *Verification requirement.*

(1) *Compliance.* To ensure compliance with the provisions of this section and the accuracy and uniformity of analytical results submitted to Customs by commercial testing laboratories, the Director, Technical Services Division, is authorized to conduct:

- (i) on-site inspections;
- (ii) interlaboratory sample exercises;
- (iii) reviews of any records described above.

(2) *Sanctions.* If a laboratory's analytical results are repeatedly inaccurate to a significant degree, or if it fails to comply with any provision in this section, the laboratory's accreditation may be suspended or revoked in accordance with paragraph (i) of this section, or liquidated damages may be assessed under the terms of the laboratory's bond.

(i) *Suspension or revocation of Customs accreditation.*

(1) *Grounds.* Failure to comply with any of the provisions of this section may be grounds for suspension or revocation of Customs accreditation of a commercial laboratory.

(2) *Notice.* The Director, Technical Services Division, shall give written notice of a proposed suspension or revocation of accreditation to the laboratory. The notice shall give specific grounds for the proposed action and shall become final unless the laboratory files a reply in accordance with paragraph (3) of this subsection.

(3) *Reply.* Within 30 days of receipt of the notice, the laboratory may file a written reply with the Director, Technical Services Division. This reply may contain answers to the allegations, rebuttal evidence, and a request to make an oral presentation to the Director, Technical Services Division, or his designee, as to why this action should not be taken.

(4) *Action on reply.* If the Director, Technical Services Division, is persuaded by the laboratory's reply or oral presentation, he shall notify the laboratory and the case shall be closed. If not, the Director, Technical Services Division, shall suspend or revoke the laboratory's accreditation and shall notify the director of the laboratory that he may request review of this action by the Commissioner in accordance with paragraph (6) of this subsection. The Director, Technical Services Division, shall forward an information copy of his actions to the district director(s) involved.

(5) *Stay of suspension or revocation.* An adverse decision by the Director, Technical Services Division, shall not become final until the time for requesting a review by the Commissioner has passed and no request has been filed by the laboratory, or the decision has been upheld.

(6) *Review of suspension or revocation.* The laboratory may petition the Commissioner of Customs to review an adverse decision by the Director, Technical Services Division. Such petitions shall be filed, in duplicate, with the Director, Technical Services Division, within 30 days of the date of the action, and should clearly state the reasons why such action should not become final. The Commis-

sioners, or his designee, shall review the petition and shall forward his written decision to the Director, Technical Services Division, for delivery to the laboratory.

(7) *Publication.* Notice of any final action by the Director, Technical Services Division, or the Commissioner of Customs suspending or revoking the accreditation of a commercial testing laboratory shall publish in the Federal Register and the CUSTOMS BULLETIN.

(j) *Supplemental applications.* The operator of a Customs-accredited commercial testing laboratory may apply to extend the laboratory's accreditation to additional tests and/or commodities by submission of a supplemental application. Supplemental applications, which may be submitted at any time, need only provide the information described in paragraphs (b) (1), (2), and (6), of this section.

(k) *Expense incurred by utilization of Customs-accredited commercial testing laboratories.* No expense incurred by an importer's utilization of a Customs-accredited commercial testing laboratory shall be borne by the Government.

3. It is proposed to revise § 151.31(a) to read as follows:

§ 151.31 Review of tests of sugar, sirup, and molasses.

(a) *Notification to importer.* When the test of the sugar has been determined and accepted by Customs for an importation of sugar, sirup, or molasses, the district director shall immediately send the importer a copy of the report showing the average test of the importation and the quantity and test of each lot from which such average test is obtained.

* * * * *

4. It is proposed to amend § 151.42 by removing the words "positive displacement" from paragraph (a)(1)(i); removing paragraph (a)(1)(ii) and renumbering paragraphs (a)(1)(iii) and (a)(1)(iv) as (a)(1)(ii) and (a)(1)(iii), respectively; adding a new paragraph (a)(3); removing the word "shall" and inserting the word "may" in paragraph (b), introductory text; and adding a new paragraph (d).

The amended and revised portions would read as follows:

§ 151.42 Controls on unloading and gauging.

(a) * * *

(1) * * *

(i) Customs approved meters at installations where provided by the importer;

(ii) Shore tank gauging; or

(iii) Weighing for trucks and railroad cars.

(2) * * *

(3) Meters provided by importers, described in paragraph (a)(1)(i), are approved by Customs on a case by case basis upon application to the district director who, with the concurrence of the Director,

Technical Services Division, or his designee, shall give tentative or final approval.

(b) *Duties of Customs officers.* Customs officers may perform or witness ullaging and gauging as follows:

* * * * *

(d) *Acceptance of quantity reports.* (1) Subject to such controls and checks as he may deem necessary, the district director may accept, for shore tank gauging and closing carrier ullages, the reports of quantities of imported petroleum and petroleum products made by commercial gaugers approved by Customs in accordance with this section provided that Customs has exercised the supervision required by § 151.42(b) and there is no evidence that the commercial gauger has failed to comply with the provisions of this section.

(2) The district director may also accept the laboratory analysis reports performed by a laboratory operated by an approved commercial gauger as part of the services provided by him for his customers provided that the laboratory complies with all requirements of § 151.14.

5. It is proposed to amend Part 151 by removing § 151.43 and reserving it.

6. It is proposed to amend Part § 151.45(a) by removing the words "required by § 153.43".

* * * * *

7. It is proposed to revise § 151.47 to read as follows:

§ 151.47 Entered quantities of petroleum or petroleum products released under entry or immediate delivery.

(a) *Optional entry of net quantity.* As an alternative to stating on the entry summary the gross quantity of petroleum or petroleum products released under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), the importer may file an entry summary for the net quantity of petroleum or petroleum products unladed. The net quantity shall be determined in accordance with § 158.13 of this chapter, with an allowance made for sediment and excessive water present, as prescribed in the table found in § 151.46, and reported in a laboratory test made by a Customs-accredited commercial laboratory. The laboratory analysis report shall be filed with the entry summary.

(b) *Use of laboratory tests in liquidation.* The analytical results (that is, API gravity, BS&W, and distillation characteristics) reported by a customs-accredited laboratory shall be used for Customs purposes if the difference between these results and the Customs laboratory results do not exceed the differences in the following table:

Percentage of BS&W found by Customs	Maximum percentage difference allowable
0.05 to 0.50.....	0.1
0.51 to 1.50.....	0.2
More than 1.50	0.3

The analytical results reported by a Customs laboratory shall be used for Customs purposes if the difference between these results and those of the Customs-accredited laboratory exceed the limits in the table above, and if the Customs-accredited laboratory cannot present clear and convincing evidence that Customs is in error.

8. It is proposed to amend § 151.54 by removing the word "chief chemist" both times it appears in the introductory text and inserting, in its place, the word "director".

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 1, 1984.

JOHN M. WALKER, JR.,

Assistant Secretary of the Treasury.

[Published in the Federal Register, October 18, 1984 (49 FR 40882)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Decisions of the United States Court of International Trade

(Slip Op. 84-109)

UNITED STATES, PLAINTIFF, *v.* F.A.G. BEARINGS CORPORATION,
DEFENDANT

Court No. 83-9-01314

Before: CARMAN, *Judge*.

MEMORANDUM OPINION AND ORDER

[Defendant's motion to dismiss denied.]

(Decided October 4, 1984)

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*A. David Lafer* and *J. Kevin Horgan* on the motion) for the plaintiff.

Heron, Burchette, Ruckert and Rothwell (*John M. Dowd* and *Thomas A. Rothwell, Jr.* on the motion); *Whitman & Ransom* (*Andrew L. Lipps* and *W. Michael Kramer* on the motion) for the defendant.

CARMAN, *Judge*: In this action where plaintiff seeks to recover lost duties as well as penalties for false descriptions of imported merchandise, defendant moves to dismiss the second amended complaint pursuant to Rules 8(a), 9(b) and 12(b)(5) of the Rules of the United States Court of International Trade, for failure to state a claim upon which relief can be granted.¹ Defendant urges as follows: (1) count I of the second amended complaint fails to state the circumstances allegedly constituting fraud with the particularity required by rule 9(b); (2) counts II through VI fail to satisfy the requirements of rule 8(a)(2), because they do not contain a plain statement of the claim showing that plaintiff is entitled to relief; (3) the complaint's allegations of false descriptions of merchandise fail to state a claim upon which relief can be granted since "they are based solely on extrapolations which cannot substitute for

¹ Rule 8(a)(2) of the Rules of this Court provides in part:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief. . . .

Rule 9(b) in part reads:

In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity.

proof of actual false descriptions"; (4) counts IV and V fail to state a claim because 19 U.S.C. § 1592 (c)(2)(B) and (c)(3)(B) are not applicable where the only possible materiality of the false statement or omission at issue is to the assessment of duties; and, (5) each of the counts fails to state a claim upon which relief can be granted because the merchandise was not entered "by means of" the alleged false statements as required by section 1592(a).

Plaintiff maintains that the second amended complaint satisfies the particularity requirement of rule 9(b) and that the facts alleged support an inference of fraud. Plaintiff further contends that defendant's merchandise was entered "by means of" false statements and that 19 U.S.C. § 1592 was not intended to apply only to the entry of prohibited merchandise.

The contentions set forth in defendant's motion to dismiss are rejected for the reasons assigned below.

BACKGROUND

Defendant has previously presented this court with a similar challenge to the sufficiency of the complaint in this action. In *United States v. F.A.G. Bearings Corp.*, 7 CIT—, Slip Op. 84-4 (Jan. 25, 1984) (F.A.G. I), the court conditionally denied defendant's motion to dismiss the first amended complaint. The court, however, ordered plaintiff to file a second amended complaint in conformity with the particularity requirement of rule 9(b) and the notice requirement of rule 8(a)(2).² On February 24, 1984, plaintiff filed the second amended complaint. This complaint, while substantially mirroring the F.A.G. I complaint, does contain several added paragraphs pertaining to the circumstances surrounding the alleged fraud.³

Those paragraphs state:

² In F.A.G. I, the first amended complaint in relevant part alleged:

6. The documents filed with the United States Customs Service in connection with the aforementioned consumption entries were material and false in that at least 14% of the merchandise entered, introduced or attempted to be entered or introduced into the United States was falsely described and, specifically, the ball/roller bearings and components thereof were described by a part number different from the part number of the actual bearing or component thereof entered into the United States.

7. The documents filed with the United States Customs Service in connection with the aforementioned consumption entries were material and false in that the price stated for the merchandise on said documents was represented on said documents and/or by written or oral statements to be the price paid by F.A.G. for said merchandise when in fact it was not.

8. Defendant F.A.G. knew or should have known that the numbers of the bearings or components thereof actually entered, introduced or attempted to be entered or introduced into the United States were different from the part numbers stated on the documents submitted to the United States Customs Service in connection with said entry, introduction or attempted introduction. Defendant F.A.G. knew or should have known that the prices stated for the imported merchandise on the documents submitted to the U.S. Customs Service in connection with the entry, introduction or attempted entry or introduction of said merchandise were not the prices it paid for said merchandise.

Because these allegations "allege[d] fraud in a conclusory form without setting forth the circumstances constituting the fraud with any particularity," the Court held that the prescriptions of rules 8(a)(2), and 9(b) had not been met. See *F.A.G. I*, 7 CIT—, —, Slip Op. 84-4, at 2-3 (Jan. 25, 1984). The court was particularly concerned with paragraph 6 of the first amended complaint which merely alleged that "at least 14% of the merchandise . . . was falsely described." *Id.* at 3; see *infra* note 3. Accordingly, the plaintiff was ordered to file a second amended complaint or risk dismissal of the action.

³ It should be noted that appended to both the first and second amended complaints is a computer read-out list of every entry that defendant F.A.G. has made into the United States. The print-out, consisting of hundreds of pages, contains approximately 27,000 entries.

6. On or about November 28, 1978, a customs officer discovered, during an inspection of a shipment of bearings being entered into the commerce of the United States from the Toledo Foreign Trade Zone by F.A.G.-U.S., that many of the part numbers appearing on the individual bearing boxes had been altered by inking-out or obliterating a suffix portion of the part number. Upon further examination, the customs officer discovered that the part numbers appearing on some of the boxes were different from the part numbers appearing on the bearings contained in the boxes.

7. On or about December 28, 1978, in response to a Customs Service request for information as to the "marking-out" of bearing descriptions, F.A.G.-U.S. submitted to Customs a letter signed by Lewe Martin, attorney for F.A.G.-U.S.; an affidavit of Karlheinz Brand, General Manager-Sales Coordination for F.A.G.-Germany; a response by F.A.G.-Germany to certain questions propounded by the Customs Service; and computer printouts purportedly listing all of the "substituted" bearings shipped to the Toledo Foreign Trade Zone during the period December 1, 1977 through November 30, 1978.

8. In the affidavit referred to in paragraph 7 above, Mr. Brand stated that it was a standard practice at F.A.G.-Germany to fill orders for particular types of bearings by supplying different types of bearings which are of equal or better quality. Mr. Brand further stated that substitutions are accomplished by reboxing the bearings or "marking-out" the boxes, and that substitutions are not reflected on commercial invoices.

9. The computer printouts referred to in paragraph 7 above disclosed that approximately 11% of all bearings shipped to the Toledo foreign trade zone during the period December 1, 1977, through November 30, 1978, were falsely described on customs entry documents.

10. In the letter referred to in paragraph 7 above, Mr. Lewe B. Martin, attorney for F.A.G.-U.S. stated that the period December 1, 1977, through November 30, 1978, is representative of shipments to the Toledo foreign trade zone during any prior twelve months.

11. On or about January 17, 1979, the United States Customs Service discovered in the correspondence files of Mr. Sam Mehta, Sales Administration Manager for F.A.G.-U.S., a September 4, 1978 computer printout indentifying substitutions not identified in the printouts referred to in paragraph 7 above.

12. Sometime after January 19, 1979, Mr. Mehta provided the Customs Service with a second computer printout indentifying substitutions of bearings during 1978, including substitutions not identified in the computer printouts referred to in paragraph 7 above.

13. The computer printouts referred to in paragraph 7, 11 and 12 above indicate that during 1978 at least 14% of the bearings shipped to F.A.G.-U.S.'s warehouse in the Toledo foreign trade zone by F.A.G.-Germany were falsely described on customs entry documents.

14. The documents filed with the United States Customs Service in connection with the consumption entries referred to in paragraph 4 above were material and false in that at least 14% of the merchandise entered, introduced, or attempted to be entered or introduced into the United States was falsely described and, specifically, the ball/roller bearings and components thereof were described by a part number different from the part number of the actual bearing or component thereof entered into the United States.

15. In a March, 1983 interview with customs agents, Manfred Kubler, chairman of the Board and Chief Executive Officer of F.A.G.-U.S., admitted that for the year 1975 F.A.G.-U.S. had received a 4% bonus on all purchases that it made from F.A.G.-Germany, which bonus was not reported to the United States Customs Service.

16. Eight credit notes issued by F.A.G.-Germany to F.A.G.-U.S. indicate that a 4% discount was granted to F.A.G.-U.S. in each quarter of the years 1975 and 1978, which discounts were not reported to the United States Customs Service.

17. Documents obtained from F.A.G.-U.S. demonstrate that during the year 1977 F.A.G.-U.S. was required to pay to F.A.G.-Germany a retroactive price increase on imported bearings, which price increase was not reported to the United States Customs Service.

18. The documents filed in connection with the consumption entries listed in paragraph 4 above, which were made during the years 1975, 1977 and 1978, were material and false in that the price stated for the merchandise on said documents was represented on said documents and/or by written or oral statements to be the price paid by F.A.G.-U.S. for said merchandise when in fact it was not.

19. Upon information and belief based upon the facts stated in paragraphs 15, 16 and 17 above, the documents filed with the United States Customs Service in connection with the consumption entries listed in paragraph 4 above, which were made during the years 1972, 1973, 1974 and 1976, were material and false in that the price stated for the merchandise on said documents was not, in fact, the price paid by F.A.G.-U.S. for said merchandise.

20. Defendant F.A.G.-U.S. knew or should have known that the part numbers of the bearings or components thereof actually entered, introduced, or attempted to be entered or introduced into the United States were different from the part numbers stated on the documents submitted to the United States Customs Service in connection with said entry, introduction, or attempted introduction. Defendant F.A.G.-U.S. knew or should have known that the prices stated for the imported merchandise on the documents submitted to the U.S. Customs Service in connection with the entry, introduction, or attempted entry or introduction of said merchandise were not the prices it paid for said merchandise.

The court must now determine whether the second amended complaint satisfies rules 8(a)(2) and 9(b).

I. The Alleged Fraud

Central to plaintiff's theory of fraudulent importation here is the practice of "substitution" which defendant allegedly engaged in between January 1, 1972 and December 30, 1978. This practice refers to the shipment of merchandise, in this case ball/roller bearings, which is equal to or in excess of the invoiced value, but which is not the precise merchandise described in the Customs entry documents. Customs agents allegedly became aware of this with respect to the F.A.G. importations when, on about November 28, 1978, an inspection of F.A.G. merchandise revealed that certain numbers on the packing crates had been altered. In affidavits to Customs officials, the F.A.G. Bearings Corporation readily admitted that the substitutions took place and that it was a standard business practice.

In addition, the second amended complaint alleges that certain "bonuses," "discounts," and "price increases" from F.A.G.'s parent to its U.S. subsidiary had gone unreported to Customs. The second amended complaint further alleges that defendant knew the documents contained false statements or omissions and were intended to defraud the United States and deprive it of lawful duties owed. Plaintiff maintains that these allegations, prima facie, satisfy rules 8(a)(2) and 9(b) as well as 19 U.S.C. § 1592.

II. The Second Amended Complaint and Rules 8(a)(2) and 9(b)

The particularity requirement for pleading fraud existed at common law and under former code practice. See *Stearns v. Page*, 48 U.S. (7 How.) 819, 829 (1849); Note, *Pleading Securities Fraud Claims with Particularity Under Rule 9(b)*, 97 Harv. L. Rev. 1432, 1432 (1984). Rule 9(b),⁴ while multi-purposed, counts among its primary objectives the "apprising of defendant of the claim against him." 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1297, at 404 (1969); see *McGinty v. Beranger Volkswagen, Inc.*, 633 F.2d 226, 228-29 (1st Cir. 1980). In addition, the rule is intended to ensure that fraud complaints are filed solely to redress a wrong reasonably believed to have happened, rather than as a pretext for discovery. See *Lewis v. Varnes*, 368 F. Supp. 45, 47 (S.D.N.Y.) *aff'd*, 505 F.2d 785 (2d Cir. 1974). Further, rule 9(b) is designed to minimize strike suits, *Segan v. Dreyfus Corp.*, 513 F.2d 695, 696 (2d Cir. 1975) (per curiam), and to protect defendants from the potentially debilitating business consequences that flow from allegations of misconduct, see *Segal v. Gordon*, 467 F.2d 602, 607 (2d Cir. 1972); *F.A.G. I*, 7 CIT at —, Slip Op. 84-4, at 3.

⁴ See *F.A.G.-I*, 7 CIT at —n. 1, Slip Op. 84-4, at 3 n.1 ("Because Rule 9(b) of the Rules of the United States Court of International Trade is identical to Rule 9(b) of the Federal Rules of Civil Procedure, authorities with respect to the latter provision are accordingly applicable.")

A. Degree of Particularity Required

In its motion to dismiss, F.A.G. maintains that plaintiff should be required to state which of the 27,000 entries are implicated, what particular merchandise was entered by means of false statements, and which particular statements or descriptions are false and material. Defendant, F.A.G., further argues that the alleged substitutions and retroactive price increases were a legitimate business practice and nonthreatening to the revenue of the United States since these practices resulted in an overstatement of the entered value.

Defendant also claims that certain hiatuses are evident from the allegations of the second amended complaint. Paragraph 13 of the complaint alleges that during 1978, at least 14 percent of the imported merchandise was falsely described. Defendant therefore concludes that for the period between 1972 and 1977 plaintiff is proceeding on mere factual extrapolation.

The court, however, is of the opinion that the second amended complaint satisfies rules 8(a)(2) and 9(b), and for several reasons. The critical phrase of rule 9(b) is "the circumstances constituting fraud," and here plaintiff has set forth those circumstances. Indeed, plaintiff has set forth the time, place, and contents of the false representations. See 5 C. Wright & A. Miller, *supra*, § 1297, at 403; see *Bosse v. Crowell Collier & Macmillan*, 565 F.2d 602, 611 (9th Cir. 1977); see also *King Automotive v. Speedy Muffler King, Inc.*, 667 F.2d 1008, 1010 (C.C.P.A. 1981). Plaintiff here has set forth the context, method, and result of the alleged fraud. Details concerning "marking out," "substitutions," "bonuses," and "discounts," lacking in the first amended complaint, fairly apprise defendant of the charges against it so that an answer may be prepared. Contrary to defendant's assertion that these facts merely represent "background details," the allegations reflect the full nature of the allegedly fraudulent transactions.

Further, it is well recognized that where many complicated transactions are involved, covering a long period of time, courts will relax the rule 9(b) requirement. See *Temple v. Haft*, 73 F.R.D. 49, 53 (D. Del. 1976).

Finally, and most importantly, the particularity requirement of rule 9(b) does not abrogate the enjoiner of rule 8 that pleadings set forth a short and plain statement of a claim. Rule 9(b) must be harmonized with Rule 8. 2A J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 9.03, at 9-28 (2d ed. 1984). Generally, as long as a complaint gives a defendant notice with particularity, the philosophy of the rules and the concept of notice pleading have been met. See *Gilbert v. Bagley*, 492 F. Supp. 714, 725-26 (M.D.N.C. 1980).⁵

⁵ Defendant relies on numerous securities fraud cases from the Second Circuit such as *Denny v. Barber*, 576 F.2d 465 (2d Cir. 1978) and *Todd v. Oppenheimer & Co.*, 78 F.R.D. 415 (S.D.N.Y. 1978). In this connection, the court notes that "the Second Circuit has consistently required far greater specificity in pleadings alleging fraud than have other circuits." Note, 97 Harv. L. Rev. 1432, 1433 n. 7 (1984).

Accordingly, the court finds that the second amended complaint meets the requirement of alleging fraud with particularity and sets forth a plain statement of the claim. Proof of the false descriptions alleged will await the trail of this action.

B. Pleading Upon Information and Belief

Defendant maintains that plaintiff has impermissibly extrapolated the facts by alleging fraud during the years 1972-1976. Admittedly, the computer printouts and statements from F.A.G. personnel do not relate to every single year involved here. Paragraph 19 of the second amended complaint pleads "upon information and belief . . . [that] the documents [for 1972-1976] filed with the United States Customs Service . . . were material and false."

Pleading fraud upon information and belief, while generally disfavored, is acceptable where accompanied by a statement of the facts supporting the belief. 5 C. Wright & A. Miller, *supra*, § 1298, at 416. Further, where as here the relevant facts are peculiarly within the province of the opposing party, courts have relaxed the rule. See *Schlick v. Penn-Dixie Cement Corp.* 507 F.2d 374, 379 (2d Cir. 1974), *cert. denied*, 421 U.S. 976 (1975). In the instant case plaintiff has put forth sufficient facts with respect to the years 1972-1977 to withstand a dismissal motion. Paragraph 10 indicates that the information relating to 1977-1978 "is representative of shipments . . . during any prior twelve months." Paragraphs 15 and 16 indicate to some degree a pattern of alleged fraudulent practices. Plaintiff's "extrapolations" upon information and belief, therefore, are permissible.

C. Materiality

Defendant argues that the complaint alleges materiality in conclusory form. Defendant further claims that even accepting arguendo the allegations, they are immaterial because the dutiable value of the imported merchandise would be unaffected.

The complaint alleges that various officials of F.A.G. have, in effect, admitted to the practice of substitutions as well as to the other allegedly fraudulent practices. It is therefore clear that the imported merchandise and declared values were not what F.A.G. said they were in the entry documents. This, *prima facie*, spells out at least the possibility of materiality since the basis of the appraisalment of the merchandise may have been affected. Further, defendant's argument that the revenue of the United States was not threatened by the misdescription, and that, therefore, they were not material, is without merit. The prohibition of 19 U.S.C. § 1592 applies "[w]ithout regard to whether the United States is or may be deprived of all or a portion of any lawful duty." *Id.*

D. Pleading of Facts Supporting an Inference of Fraud

The crux of defendant's argument in this respect is that a fraud complaint must allege facts establishing that the misstatements were made with an intent to defraud.⁶ The resolution to this contention, however, is largely revealed by the court's earlier discussion of the balance to be struck between rules 8(a)(2) and 9(b). "The clear weight of authority is that Rule 9 requires specification of the time, place, and content of an alleged false representation, but not the circumstances or evidence from which fraudulent intent could be inferred." *McGinty v. Beranger Volkswagen, Inc.*, 633 F.2d 226, 228 (1st Cir. 1980). The court considers the *McGinty* rationale proper in this context. Accordingly, the second amended complaint is not defective for failure to state the circumstances that give rise to an inference of fraud.⁷

III. The "By Means of" Requirement and Teraoka

In *United States v. Teraoka*, 669 F.2d 577 (9th Cir. 1982), the Ninth Circuit, in construing 18 U.S.C. § 542 (1982), the criminal law counterpart to 19 U.S.C. § 1592, held that section 542 was violated only where false statements resulted in the importation of otherwise excludable merchandise. The court opined that only prohibited or restricted merchandise could be entered "by means of" false entry documents within the meaning of section 542.

Defendant seizes on the identical "by means of" language in section 1592 and urges that because the ball/roller bearings in issue here were not prohibited or restricted merchandise, their entry was not accomplished "by means of" material and false entry documents. Defendant asserts, therefore, that the complaint fails to state a claim upon which relief can be granted.

While it is not necessary for the court to construe criminal law statutes, the contention of the defendant is without merit and would lead to absurd results in civil penalty and forfeiture-type cases. Such a restrictive reading of section 1592 would emasculate that provision, depriving the United States Government of one of

⁶ On July 2, 1984, the Court granted plaintiff's motion for leave to amend paragraph 24 of the second amended complaint to add an intent allegation. Amended paragraph 24, in part, reads: "F.A.G.-U.S. intentionally submitted these documents . . . with the intent to defraud the United States." Defendant maintains that this added allegation does not satisfactorily establish an intent to defraud since the underlying facts, in defendant's view, have not been pleaded with sufficient particularity.

⁷ Counts II through VI of the second amended complaint, the nonfraud counts, in the court's view, clearly satisfy rule 8(a)(2)'s requirement that the claim be set forth in a short and plain statement showing that the pleader is entitled to relief. The discussion above relating to rules 8(a)(2) and 9(b) a fortiori establishes the legitimacy of the nonfraud counts under rule 8(a)(2). Regarding defendant's repeated attacks on plaintiff's alleged "extrapolations of fact," defendant is, in effect, impermissibly demanding the pleading of evidentiary facts. See *Gissen v. Colorado Interstate Corp.*, 62 F.R.D. 151, 154 (D. Del. 1974). Finally, defendant's memoranda are peppered with references to the admittedly harsh, even draconian remedies available under 19 U.S.C. § 1592. The court recognizes that the amounts prayed for in the complaint are staggering. The fraud count alone seeks a penalty equal to the domestic value of all of F.A.G.'s entered merchandise, or more than \$451.9 million. The court, while not unsympathetic to the business consequences of such a contingent liability, nevertheless recognizes that the severity of these remedies has been a jealously guarded tradition in American law. See *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 237 (1972). See generally Dickey, *Survivals From More Primitive Times: Customs Forfeitures in the Modern Commercial Setting Under Sections 592 and 618 of the Tariff Act of 1930*, 7 Law & Pol'y Int'l Bus. 691, 706-11 (1975).

its more effective and widely-used customs civil enforcement statutes. Moreover, false statements in civil penalty and forfeiture cases concerning value, origin, quantity, and price made in connection with the entry process have historically met the injunction of the "by means of" false statement requirement of civil statutes. See *United States v. Twenty-Five Packages of Panama Hats*, 231 U.S. 358, 359-60 (1913) (applying the forfeiture provision of a 1909 act to attempted entry of falsely valued hats); *United States v. Brown*, 404 F. Supp. 968, 971 (S.D.N.Y. 1975), *aff'd mem.*, 538 F.2d 315 (2d Cir. 1976) (penalties under 19 U.S.C. § 1592 for falsely invoiced telephones).

CONCLUSION

Plaintiff, in its second amended complaint, has satisfied the pleading requirements of rules 8(a)(2) and 9(b). Further, under 19 U.S.C. § 1592, plaintiff has stated a claim upon which relief can be granted. Accordingly, defendant's motion to dismiss for failure to state a claim must be, and hereby is, denied.

It is so ordered.

(Slip Op 84-110)

BLAW KNOX CONSTRUCTION EQUIPMENT CO., A DIVISION OF WHITE CONSOLIDATED INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, ET AL., DEFENDANT, AND FORTRESS ALLATT LIMITED, INTERVENOR

Court No. 84-6-00846

Before: CARMAN, *Judge*.

MEMORANDUM OPINION AND ORDER

[Plaintiff's motion for preliminary injunction denied; case remanded to the ITA with instructions.]

(Decided October 4, 1984)

Barnes, Richardson & Colburn (Robert E. Burke on the memoranda and David A. Riggle on the memoranda and at the oral argument) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, (*Velta A. Melnbrensis* on the memoranda and *Kevin C. Kennedy* on the memoranda and at the oral argument) for the defendant.

Cameron, Hornbostel, Adelman & Buttermann (*William K. Ince* on the motion) for the intervenor.

CARMAN, *Judge*: This matter is before the Court on plaintiff's motion for a preliminary injunction, defendants' motion for summary judgment, and plaintiff's cross-motion for summary judgment. Intervenor Fortress Allatt Limited, filed memoranda in opposition to plaintiff's motion for a preliminary injunction and in support of defendants' motion for summary judgment.

Plaintiff initiated its motion for a preliminary injunction alleging that the International Trade Administration (ITA) of the Department of Commerce (Commerce) acted unlawfully in unilaterally modifying a Final Notice of Administrative Review concerning the antidumping finding for Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada. Plaintiff requests relief restraining the defendants from enforcing the alleged unlawful notice and ordering the defendants to enforce the final notice of annual review as published in the Federal Register. Plaintiff has argued it will suffer immediate and irreparable injury through lost sales due to import competition.

Defendants oppose plaintiff's motion for a preliminary injunction arguing plaintiff has not made the requisite showing and defendants have responded with a motion for summary judgment. Plaintiff agrees there are no material facts at issue and has cross-moved for summary judgment. A brief summary of the facts is noted here.

Plaintiff, a United States manufacturer of self-propelled bituminous paving equipment and parts, was the petitioner in the antidumping investigation regarding replacement parts for self-propelled bituminous paving equipment from Canada and participated as an interested party in the administrative review conducted pursuant to Section 751 of the Trade Agreements Act of 1979, 19 U.S.C. § 1675 (1982). The result of this administrative review was that the weighted average dumping margin for Fortress Allatt Limited, a Canadian manufacturer, was determined to be 4.2 percent ad valorem, the notice of which is published at 49 Fed. Reg. 1263 (1984), as amended by 49 Fed. Reg. 2131 (1984).¹ The 4.2 percent rate does not reflect the actual dumping margin found to exist during the review period for the merchandise sold by Fortress Allatt to nonrelated U.S. firms, a margin equal to 0.0 percent ad valorem.

The margin of 4.2 percent was the weighted average of two major components. The first component comprised Fortress Allatt's sales to a related company in the United States, which were exporter's sales price (ESP) transactions and for which a dumping margin of 14.43 percent was found by the ITA to exist. The second component was Fortress Allatt's purchase price transactions which, in contrast to ESP sales, involved sales in the United States to unrelated buyers such as wholesalers or end users of the product. As noted above, a margin of 0.0 percent was established for Fortress Allatt Limited's purchase price sales. The 4.2 percent weighted average margin was the result of the above two components. Plaintiff participated fully in all stages of the administrative review with re-

¹ The weighted average margin was determined pursuant to a policy of the Commerce Department stated in the final results as follows:

Department's Position: The Department's practice is to publish one weighted average percent margin for determining estimated antidumping duties cash deposit rates. We see no reason to deviate from that practice here.

spect to these results and did not seek judicial review pursuant to 19 U.S.C. § 1516a(a)(2)(A)(i) and 28 U.S.C. § 1581(c).

On March 21, 1984, Fortress Allatt submitted a memorandum to the ITA urging that the single 4.2 percent weighted average margin be broken into two separate margins, one for ESP sales and the other for purchase price transactions. This determination was important to Fortress Allatt Limited because it had closed its ESP operation in the United States and all future exports to the United States would consist of purchase price transactions which were determined to have an antidumping duty margin of 0.0 percent. Absent a separation of the margins by the ITA, the purchase price sales would still be subject to a 4.2 percent duty deposit requirement.

On May 5, 1984, Commerce issued instructions to the United States Customs Service (Customs) to collect antidumping duty deposits on imports of merchandise manufactured by Fortress Allatt Limited at the rate of 14.43 percent on its sales in the United States to any related company and of 0.0 percent on its sales to unrelated purchasers thereby granting Fortress Allatt Limited the relief it requested. Plaintiff, Blaw Knox, filed a summons and complaint in this Court challenging the May 5 directive.

It is argued by defendants in their motion for summary judgment, as well as by the intervenor, that the ITA acted within its statutory authority in issuing the corrected instructions to Customs regarding the cash deposit requirement on the imports in question. Plaintiff argues that the ITA cannot change the final results of a section 751 antidumping review, specifically the estimated duty deposit rate, once it is published.

This Court finds the ITA has the authority to issue corrected instructions to Customs regarding the cash deposit requirement on imports. Plaintiff, however, should have been given notice of these corrected instructions and an opportunity to respond.

Plaintiff appears to indicate in its memoranda that the ITA is committed to the language of the notice of the final results published in the Federal Register as opposed to the determination itself. On this point the Court cannot agree. Section 751(a)(2), 19 U.S.C. § 1675(a)(2), provides that it is the "determination [that] shall be the basis for . . . deposits of estimated duties." *Id.* In the case at hand, there exists within the ITA's determination a basis for establishing the amount of estimated antidumping duty deposits to be collected and this Court cannot find any prohibition against referring back to this determination to make a correction.

Both defendants and intervenor cite *Gilmore Steel Corp. v. United States*, 7 CIT —, 585 F. Supp. 670 (1984). In *Gilmore*, the Court held that if the ITA has incorrectly initiated an antidumping investigation, it has the authority to reconsider and correct that decision. 7 CIT at —, 585 F. Supp. at 674. Although not determinative in the case at hand, the Court finds *Gilmore* helpful in its indica-

tion that remedial steps by the ITA are not only possible but necessary in certain instances. It is noted, however, that nowhere in *Gilmore* does the Court state that notice of the remedial measures taken is not required.

Finally, plaintiff reflects that "[t]he action of the Commerce Department beyond its legal authority which denied the opportunity to Blaw Knox to participate meaningfully in the cash deposit review is the very core of the controversy." Plaintiff's Memorandum in Response, at 7. With this statement, the Court agrees. Plaintiff has made a variety of arguments with respect to broader matters as well as to jurisdiction. These arguments need not be addressed. The question is should the plaintiff have had notice of the corrections made by the ITA. This Court finds notice should have been forthcoming. As noted by the parties, the Senate Report states: "The Secretary would be required to publish a summary of the results of his review, together with the notice of any duty to be assessed, estimated duty to be deposited, or investigated [sic] to be resumed." S. Rep. No. 249, 96th Cong., 1st Sess. 80, reprinted in 1979 U.S. Code Cong. & Ad. News 381, 466. It follows that if the requirement exists to publish a notice of the duty to be deposited, a notice of any change in that duty should also be published.

Although this Court finds that the ITA had the authority to make remedial corrections, it also finds notice to the plaintiff as an interested party should have been made. This case, therefore, shall be remanded to the ITA so that the plaintiff may have its opportunity to respond to the corrections made by the ITA.

With respect to plaintiff's motion for a preliminary injunction, this Court cannot find that plaintiff has made the requisite showing necessary to prevail. Plaintiff asserts that absent a preliminary injunction ordering the defendants to enforce the final notice of the review published in the Federal Register² it will suffer lost sales and thereby be immediately and irreparably harmed.

In order for the plaintiff to prevail on its motion for a preliminary injunction, it must make the requisite showing of the following four elements: (1) that they will be immediately and irreparably injured; (2) that there is a likelihood that they will succeed on the merits; (3) that the public interest would be better served if the relief requested was granted; and (4) that the balance of hardships on all the parties favors the moving party. *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983).

This Court cannot, based on the assertions made by the plaintiff, find the showing of immediate and irreparable harm required by the preliminary injunction standard. Plaintiff has relied on the affidavit of Thomas Skinner to show lost sales. This statement, however, is not enough. Protection against lost sales is not an avowed

² The final notice of the review in essence would require Customs to collect estimated antidumping duty deposits on imports of the merchandise involved at a rate of 4.2 percent ad valorem, which represents the weighted average margin previously determined.

purpose of the antidumping statute; the purpose is rather to afford protection from unfairly traded items. Usually, pending a section 751 review covering current entries, the liquidation of entries is suspended. At the end of a section 751 review, actual dumping margins, if any, are determined and utilized in the liquidation of entries. None of the entries made by intervenor will escape assessment of antidumping duties if applicable. Furthermore, as noted by the plaintiff, the core of plaintiff's complaint is that it did not get the opportunity to meaningfully participate in the cash deposit review. Since this Court has determined that a remand is in order, plaintiff is receiving more than its day in court. Not only has the plaintiff had its day before this Court, but will also have a chance to put forth its arguments on remand. Furthermore, the balance of hardships on all parties does not favor the plaintiff but rather the intervenor, Fortress Allatt Limited. Given that Fortress Allatt has represented that it has terminated its ESP sales operations in the United States, it would appear to be a grave hardship to apply a weighted average dumping margin of 4.2 percent to fairly traded imports at this point.

CONCLUSION

For the reasons set forth in this opinion, plaintiff's motion for a preliminary injunction must be denied and this case must be remanded to the ITA. On remand, plaintiff shall have an opportunity to respond to the remedial corrections made by the ITA, that is, the separation of the antidumping duty margins.

It is so ordered.

(Slip Op. 84-111)

MAST INDUSTRIES, INC. AND COUNTRY MISS, INC., PLAINTIFFS, *v.*
DONALD T. REGAN, SECRETARY OF THE TREASURY, WILLIAM VON
RAAB, COMMISSIONER OF CUSTOMS, THE UNITED STATES TREAS-
URY DEPARTMENT, THE UNITED STATES CUSTOMS SERVICE AND
THE UNITED STATES, DEFENDANTS, AND AMERICAN FIBER/TEX-
TILE/APPAREL COALITION, DEFENDANT-INTERVENOR

RETAIL INDUSTRY TRADE ACTION COALITION, ET AL., PLAINTIFFS, *v.*
UNITED STATES CUSTOMS SERVICE, ET AL., DEFENDANTS, AND

AMERICAN FIBER/TEXTILE/APPAREL COALITION, DEFENDANT-INTERVENOR

Laura Ashley, Inc., Liz Claiborne, Inc., Marisa Christina Holdings, Inc., U.S. Shoe Corp., Plaintiffs, v. Donald T. Regan, Secretary of the Treasury, William Von Raab, Commissioner of Customs, The United States Treasury Department, The United States Customs Service and The United States, Defendants, and American Fiber/Textile/Apparel Coalition, Defendant/Intervenor

Consolidated Court No. 84-8-01129

Before: DiCarlo, Judge.

MEMORANDUM OPINION AND ORDER

Plaintiffs challenge the promulgation of interim regulations by Customs at the direction of the President, which *inter alia* provides rules for the determination of country of origin for textile products subject to quota; changes regulations for governing the manipulation of textile products in bonded warehouses and foreign trade zones; and regulations giving Customs discretion to require more detailed information before allowing textile products to be transported in bond.

Plaintiffs contend that congressional delegation of authority to the President by Section 204 of the Agricultural Act of 1956 is an unconstitutional delegation of legislative power in violation of the separation of powers doctrine, and assert that the interim regulations are arbitrary, capricious and contrary to law. Plaintiffs also contend that the interim regulations are not exempt from prior notice and comment provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, by virtue of the foreign affairs function exception of 5 U.S.C. § 553 (a)(1).

Held: Since Congress expressed a clear objective, i.e., the limitation of textile imports, Section 204 is a valid delegation of power to the President. The issuance of the interim regulations falls within his delegated authority and are in accordance with law. Rulemaking powers delegated to the President by Congress must be exercised in accordance with the prior notice and comment provision of the APA, unless the regulation comes within an exception of the Act.

The Court holds that those regulations which define or alter quantitative limitations in bilateral textile agreements, clearly and directly involve a foreign affairs function and therefore are exempt from the prior notice and comment provisions of the APA. Regulations dealing with country of origin and manipulation of textiles fall under this exception. The Court further holds that those regulations which are not within the foreign affairs function exception are within the general statements of policy exception to the APA

since the regulations do not establish binding norms and Customs is free to exercise its discretion in implementing them. The regulations dealing with in-bond transportation are within this exception.

[Defendants' motion for summary judgment is granted.]

(Decided October 4, 1984)

Mandel and Grunfeld (James Resti and Robert B. Silverman), for the plaintiffs in Mast Industries, Inc. et al v. Regan, et al.

Weil, Gotshal & Manges (Stuart M. Rosen, Richard Davis, and Jeffrey Bialos, Charles H. Bayar and Bret E. Suval), for the plaintiffs in Retail Industry Trade Action Coalition, et al. v. United States Customs Service, et al.

Siegel, Mandell & Davidson, P.C. (Allan H. Kamnitz and Anthony Y. Cheh) for the plaintiffs in Laura Ashley, Inc. et al. v. Regan, et al.

Richard K. Willard, Acting Assistant Attorney General; David M. Cohen, Director, Commercial Litigation Branch (Kevin C. Kennedy) for the defendants in Mast, Retail Industry Trade Action Coalition and Laura Ashley.

Miller & Chevalier, (Donald Harrison, James P. Tuite, and Kenneth B. Reisenfeld) for the defendant-intervenors in Mast, Retail Industry Trade Action Coalition and Laura Ashley.

DiCARLO, Judge: Plaintiffs, importers and retailers of textile products, are challenging interim regulations amending requirements for importing textiles and textile products that are subject to quantitative limitations under bilateral trade agreements or pursuant to unilaterally imposed restraints. These actions, consolidated September 28, 1984, raise questions about the authority delegated to the President under Section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. § 1854 (1982), (Section 204) and the application of the rulemaking procedures set forth in the Administrative Procedure Act, 5 U.S.C. §§ 551-706 (1982) (APA), to the President's exercise of this authority.

The complaint in *Mast Industries, Inc. v. Regan*, No. 84-8-01129 (*Mast*) was filed August 9, 1984. *Mast* filed their motion for summary judgment August 20, 1984. Defendants answered and cross-moved for summary judgment August 24, 1984.

Retail Industry Trade Action Coalition, et al. v. United States Customs Service, et al. (RITAC) was filed August 29, 1984. On August 30, 1984, the Court granted *RITAC's* motion for an order to show cause why a preliminary injunction should not issue to enjoin implementation of the interim regulations. On September 11, 1984, the defendants moved for an order treating *RITAC's* motion for a preliminary injunction as a motion for summary judgment, and the defendants' opposition as a cross-motion for summary judgment or to dismiss. *RITAC* moved for summary judgment September 21, 1984. On September 21, 1984, defendants cross-moved for summary judgment or dismissal.

Oral argument was heard September 6, 1984, on the *Mast* motion for summary judgment and the *RITAC* motion for a preliminary injunction.

Laura Ashley, Inc. v. Regan (Laura Ashley), was filed August 29, 1984. *Laura Ashley* moved for summary judgment September 13. Defendants cross-moved for summary judgment September 20.

Defendant-Intervenor, American Fiber/Textile/Apparel Coalition, an association of domestic textile manufacturers and labor unions, was granted leave to intervene in these cases September 20, 1984, and filed its brief September 24, 1984. Plaintiffs responded September 27, 1984.

In ruling on cross-motions for summary judgment, the Court must first determine whether genuine issues of material fact exist. If there are none, it must then decide whether either party is entitled to judgment as a matter of law. *American Motorist Insurance Co. v. United States*, 5 CIT —, Slip. Op. 83-8, at 4 (February 1, 1983); *Carson M. Simon & Co. v. United States*, 3 CIT 4, 5 (1982); see *United States v. United States Gypsum Co.*, 340 U.S. 76, 86-88 (1950) (Sherman Act violation ripe for decision on summary judgment in nonjury case).

Pursuant to Rule 56(i) of the Rules of this Court, the parties in *Mast* and *Laura Ashley* provided the Court with joint statements of material facts that are not in dispute. The parties agree that the pleadings, briefs, affidavits and all other papers filed in these actions "show that there is no genuine issue as to any material fact" under Rule 56(d), and that the actions are ripe for summary judgment. *RITAC* maintains that there are unresolved factual issues precluding summary judgment for the defendants on *RITAC's* third, fourth and sixth causes of action. For reasons stated in relevant parts of its opinion, the Court disagrees.

I. Background

On August 3, 1984, Customs published in the Federal Register, 49 Fed. Reg. 31,248-54 (1984), a notice promulgating interim regulations containing new rules and documentation requirements by which Customs would enforce visa and export license, country of origin, documentation, and other requirements and restrictions applicable exclusively to importations of textile products.¹ The notice stated that the interim regulations were exempt from the rulemaking requirements of the APA as involving "a foreign affairs function of the U.S.," and that written comments received on or before October 2, 1984, would be considered before adoption of final rules. See 5 U.S.C. § 533 (a)(1), (b)-(c).

¹ The Committee for the Implementation of Textile Agreements (CITA), directed that the interim regulations be issued. CITA is composed of representatives of the Departments of Commerce, Treasury, State and Labor, and the United States Trade Representative, and is authorized to supervise and implement textile agreements within the delegation from Congress under Section 204. Executive Order 12,475, published in the *Federal Register* May 11, 1984, 49 Fed. Reg. 19,955, directed the Treasury Department to promulgate the regulations "[i]n accordance with policy guidance provided by [CITA]." *Id.* CITA provided this "policy guidance" in a letter to John M. Walker, Jr., Asst. Secretary, Department of Treasury, from Walter C. Lenahan, Chairman of CITA, dated July 27, 1984, and attached as Exhibit J of Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment in *Mast*.

The interim regulations became effective September 7, 1984 for textile products exported from their "country or origin," as therein defined. On August 23, 1984, Customs announced that the interim regulations would not be enforced against textile products contracted before August 3, 1984, and exported to the United States on or before October 31, 1984. For other exports, the interim regulations remained effective as of September 7, 1984. This announcement was published in the Federal Register on August 29, 1984. See 49 Fed. Reg. 34,199 (1984).

Customs in issuing the interim regulations relied on Section 204 which allows the President to make agreements with foreign governments limiting their textile exports to the United States, and to issue regulations implementing these agreements.²

The notice of August 3rd stated that the "future administration of these agreements was severely jeopardized" by the decision in *Cardinal Glove Co. v. United States*, 4 CIT 41 (1982), which found the U.S.-Hong Kong bilateral agreement applicable only to those textile products having Hong Kong as their "country of exportation." The Court found glove panels manufactured in Hong Kong "substantially transformed" when sewn together into finished gloves in Haiti, and, therefore, "exported" from the latter country for quota and export licensing purposes. See *id.* at 45 & n.4

The defendants contend in their briefs and affidavits that the interim regulations are necessary to prevent increasing circumvention of existing quota limitations by importers under the "country of origin" rule stated in *Cardinal Glove*. The defendants cite:

The recurring situation where, for example, country A would export its nearly-completed textile products to country B, where the product would undergo an insubstantial sewing or packaging process. From there, the product would be imported into the United States under country B's quota for that product. In this way, country A, whose quota for that textile product had been filled, would seek to gain entry of its textile products into the United States in circumvention of the MFA and its bilateral textile agreement with the United States.³

As a result of "circumvention" of the MFA and the bilaterals, the defendants state that textile imports increased 25 percent in 1983 and 41 percent in the first half of 1984. Imports of textile products in the 12 months ending in June, 1984, total 8.7 billion square yards equivalent (SYE), up from 3.8 billion SYE in 1975 and

² Pursuant to Section 204, the United States has entered into the Arrangement Regarding International Trade in Textiles, the Multifiber Agreement, (MFA), a multilateral agreement establishing standards for regulating imports.

The MFA provides a basis on which textile importing nations, as the United States, may negotiate agreements with an exporting nation limiting textile imports or, if necessary, unilaterally imposing import restraints. Each bilateral sets an aggregate limitation on total textiles and textile product exports to the United States from the particular country as well as limitations for groups of products or specific categories of "sensitive" products.

³ Defendants' Opposition to Plaintiffs' Motion for Summary Judgment in *Mast*, at 14.

4.9 billion SYE in 1980, with resulting ill effect on the U.S. domestic textile industry.⁴

Plaintiffs do not contest that textile imports into the United States have rapidly increased, but deny circumvention of the MFA or the bilaterals. They assert that the meaning of "substantial transformation" for purposes of "country of origin" determination is well established and that they have arranged their multinational manufacturing and processing operations in reliance on this standard. They contend that the interim regulations will create shortages and financial loss as textile products previously eligible for importation will now be subject to quota restrictions imposed upon their "new" country of origin. Plaintiffs estimate "the adverse affect [of the interim regulations] could be as high as \$1.6 billion or more at retail" and assert that the government of Hong Kong alone has estimated that \$700 to \$800 million of its annual apparel trade with the United States will be affected.⁵

Under interim regulation § 12.130(a), the visa or export license needed for textiles imported into the United States must be issued by the government of the "country of origin," regardless of whether the goods were exported from that country to the United States. It determines the "country of origin" for textiles which consist, in whole or in part, of materials which originated, or were processed in, another foreign country.⁶ In order to determine country of origin, interim regulation § 12.130(c) imposes documentation requirements and denies entry to textiles exported without the documents. Imports of textiles that are not wholly the growth, product, or manufacture of one country must be accompanied by a declaration including (a) the origin of all materials; (b) the nature of the manufacturing or processing operations performed on the materials and where these processes were performed; and, (c) the material and direct processing costs involved in each such operation. If Customs determines that the information contained in this declaration is incomplete or insufficient, Customs will detain the goods until the "best information available" is obtained. Interim regulation § 12.130(e).

Interim regulations §§ 18.11 and 6.18 permit the district director to require evidence of the value and quantity of textiles at the port

⁴ Affidavit of Walter C. Lenahan, Deputy Assistant Secretary for Textiles and Apparel, International Trade Administration, U.S. Department of Commerce and Chairman of CITA, at 4, 5.

⁵ Letter from J. Robert Brouse, Managing Director, Retail Trade Action Coalition, to John W. Walker, Jr., Assistant Secretary of the Treasury, Attachment at 2 (August 17, 1984), Exhibit 2 to Plaintiffs' Order to Show Cause in *RITAC*.

⁶ Under the interim regulations, a country will not be recognized as the "country of origin" of a textile article unless that article is subjected to a "substantial manufacturing or processing operation" which "substantially transform[s]" the article into a new and different article of commerce. Interim regulation § 12.130(b)(1) specifically precludes several manufacturing/processing operations from being considered as effecting a "substantial transformation," including assembling apparel from fabric components, and finishing, treating, or dyeing fabric or apparel. Interim regulation § 12.130(b)(3) provides that Customs will determine whether a textile or textile product has been "substantially transformed" by applying several criteria, including change in commercial designation or identity, change in essential character, and change in commercial use. The regulations appear to contemplate that all of these criteria will be considered and applied in each instance.

of arrival before they may be entered for transportation in bond without appraisalment.

Interim regulations §§ 144.38(f), 146.49, and 19.11(g) prohibit withdrawal from bonded warehouse, or transfer from a foreign trade zone, textiles or textile products subject to visa or export license requirements at the time of their importation if, during their time in the warehouse or foreign trade zone, they were changed, by manipulation or otherwise, so as to alter their country of origin (as defined in the interim regulations) or their textile quota category, or to exempt them from visa or export license requirements.

Interim regulation § 12.131 requires a formal entry and visa or export license for separate shipments of textiles and textile products designated for one consignee on the same conveyance on the same day, the combined value of which is over \$250.00.

The *Mast* complaint contains five counts, the *RITAC* complaint six, and the *Laura Ashley* complaint three.

Count I in *Mast* and *Laura Ashley* and Counts I and II in *RITAC* allege that the defendants violated the Administrative Procedure Act in promulgating the interim regulations without providing for notice of the rulemaking and an opportunity for comment by the public.

Count II in *Mast* and *Laura Ashley* and Count III in *RITAC* allege that the Executive exceeded his congressionally delegated authority under Section 204.

Count III in *Mast* and Counts IV and V in *RITAC* allege that the interim regulations conflict with statutes and holdings of this Court and are, therefore, arbitrary, capricious, and unsupported by valid administrative purpose, and should be declared unlawful under 5 U.S.C. § 706(2)(A).

Count IV in *Mast* and Count III in *Laura Ashley* allege that in promulgating the interim regulations, Customs violated 19 C.F.R. § 177.10(c)(2) (1983).⁷

Count V in *Mast* alleges that Section 204 is an unconstitutional delegation of legislative power to the Executive by Congress.

Count VI in *RITAC* alleges that the interim regulations are retroactively effective and therefore violate Article 1, section 10, clause 1 of the United States Constitution.

The defendants argue that the actions should be dismissed for lack of jurisdiction, failure to exhaust administrative remedies,

⁷ Section 177.10(c)(2) of the Customs Regulations provides that before publication of "a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice must be published in the *Federal Register* and an opportunity for interested parties to comment must be provided." Plaintiffs contend no such notice or opportunity to comment was afforded and the interim regulations thus violate § 177.10(c)(2), rendering the interim regulations null, void and without legal effect.

The regulations are issued pursuant to an Executive Order. Customs is acting at the direction of the President. Under these circumstances, it is the opinion of the Court that section 177(c)(2) does not obligate Customs, acting under Executive Order, to follow more stringent notice and comment procedures than contained in the APA.

Whatever procedural defects, if any, there are in the interim regulations with respect to Section 177.10(c)(2), they constitute, at most, harmless error. See *Timken Co. v. Regan*, 4 CIT 174, 179, 552 F. Supp. 47, 52 (1982).

lack of standing, nonjusticiability, and failure to state a claim upon which relief may be granted.

Part II of this opinion considers the defendants' claim that the Court does not have jurisdiction and the plaintiffs lack standing; Part III discusses the scope of Congress' delegation to the President of authority to implement international textile agreements and its constitutionality (*Mast* Counts II and V; *RITAC* Count III and VI;⁸ *Laura Ashley* Count II); Part IV considers the relationship between these interim regulations and existing statutes and judicial precedent, and whether the interim regulations are arbitrary, capricious or unlawful under 5 U.S.C. § 706(2)(A) (*Mast* Count III; *RITAC* Counts IV and V); Part V discusses application of the notice and comment provisions of the APA and of 19 C.F.R. § 177.10(c)(2) (*Mast* Counts I,⁹ and IV; *RITAC* Counts I and II; *Laura Ashley* Counts I, III).

II. Jurisdiction and Standing

The defendants contend that the Court does not have subject matter jurisdiction under 28 U.S.C. § 1581(i) (3) and (4). The Court disagrees.

As a general rule, challenges to classification, valuation and entry of merchandise are reviewed pursuant to 28 U.S.C. § 1581(a) after the administrative remedies under 19 U.S.C. § 1514 and § 1515 have been exhausted. *United States v. Uniroyal, Inc.*, 69 CCPA 179, 182, 687 F.2d 467, 471 (1982) ("Congress did not intend the Court of International Trade to have jurisdiction over appeals concerning completed transactions when the appellant had failed to utilize an avenue for effective protest before the Customs Service").

A denied protest is not a condition precedent to the Court's exercise of jurisdiction. In *United States Cane Sugar Refiners' Association v. Block*, 69 CCPA 172, 683 F.2d 399 (1982), the plaintiff challenged a Presidential Proclamation imposing quotas on sugar imports. The Court of Customs and Patent Appeals held:

We are persuaded that in this case, involving the potential for immediate injury and irreparable harm to an industry and

⁸ The *RITAC* plaintiffs, in their sixth cause of action, allege that the interim regulations are a retroactive impairment of contract in violation of the impairment of contracts clause, U.S. Const., Article I, section 10, implicating due process rights under the fifth amendment. The impairment of contracts clause has never been interpreted to apply to the federal government. See *Washington Star Co. v. International Typographical Union Pension Plan*, 729 F.2d 1502, 1507 (D.C. Cir. 1984). Through the clause may have relevance in determining whether a "taking" of property has occurred for purposes of the fifth amendment, plaintiffs here lack a property interest. As the Supreme Court has stated:

No one has a legal right to the maintenance of an existing rate or duty. Neither the action of Congress in fixing a new tariff nor that of the President in exercising his delegated power is subject to impeachment if the prescribed forms of legislation have been regularly observed.

Norwegian Nitrogen Prods. Co. v. United States, 288 U.S. 294, 318 (1933); See also *S.J. Stile Assocs., Ltd. v. Snyder*, 68 CCPA 27, 30n.7, 646 F.2d 523, 526n.7 (1981).

⁹ The *Mast* complaint in Count I also contends that the defendants failed to abide by the requirements of the Regulatory Flexibility Act, 5 U.S.C. §§ 603, 604 (1982), and Executive Order 12,291, 46 Fed. Reg. 13,193 (1981) in promulgating these rules. This issue was not briefed by plaintiffs and the Court notes simply that the compliance or noncompliance of agencies with the Regulatory Flexibility Act and Executive Order 12,291 is specifically precluded from judicial review. 5 U.S.C. § 611.

a substantial impact on the national economy, the delay inherent in proceeding under § 1581(a) makes relief under that provision manifestly inadequate and, accordingly, the court has jurisdiction in this case under § 1581(i).

69 CCPA at 175 n.5, 683 F.2d at 402 n.5; see also *American Association of Exporter & Importers Textile & Apparel Group v. United States*, 7 CIT —, 583 F.Supp. 591, 593 & n.9 (1984), *appeal docketed*, No. 84-1060 (Fed. Cir April 13, 1984); *Associated Dry Goods Corp. v. United States*, 2 CIT 51, 55, 521 F.Supp 473, 476 (1981), *modified*, 3 CIT 1, 533 F.Supp. 1343, *vacated as moot*, 69 CCPA 169, 682 F.2d 212 (1982).

In this case, the interim regulations will restrict imports and result in an embargo of textiles from nations whose quotas are full. Relief under § 1581(a) would be "manifestly inadequate" and the potential of "immediate injury and irreparable harm to an industry and a substantial impact on the national economy" is very real. The Court has jurisdiction in this action under § 1581(i).

The defendants also challenge the standing of these plaintiffs to bring these actions.

Plaintiffs import textile products. They have a direct interest in purchasing textile products and have entered into contractual relationships based upon the former regulations. The imposition of a new "country of origin" standard effectively acts as a quantitative restraint on the import of textiles and clearly injures the plaintiffs as "business relationships . . . could be disrupted and adversely affected by the quotas." *United States Cane Sugar Refiners' Association v. Block*, 3 CIT at 202, 544 F.Supp at 887. Accordingly, the Court holds that plaintiffs have standing in these actions.

The remaining plaintiffs are four trade associations that are members of RITAC and that are acting on behalf of their members. The members of the trade associations purchase and import into the United States textile products subject to the interim regulations. In *United States Cane Sugar Refiners' Association v. Block*, and *American Association of Exporters and Importers*, the courts ruled a plaintiff-trade association possessed standing pursuant to 28 U.S.C. § 2631(i). *United States Cane Sugar* was affirmed on this point by the Court of Customs and Patent Appeals and controls here. See 69 CCPA at 175 n.5, 683 F.2d at 402n.5, *aff'g* 3 CIT 196, 544 F. Supp. 883 (1982).

III. Delegation

The *Mast* plaintiffs contend Section 204 is an unconstitutional delegation of legislative authority to the President. The Court disagrees.

An act of Congress was last invalidated as unconstitutionally delegating legislative authority in 1935. See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 541-42 (1935); *Industrial Union*

Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 717 n.30 (1980) (Marshall, J., dissenting).

"The plenary authority of Congress to regulate foreign commerce, and to delegate significant portions of this power to the Executive, is well established." *California Bankers Assn. v. Shultz*, 416 U.S. 21, 59 (1974).

Statutes granting broad discretion to the President to implement trade agreements are common, and they often contain language similar to that in Section 204. See, e.g., Section 201(a) of the Trade Expansion Act of 1962, 19 U.S.C. § 1821(a), discussed in *U.S. Cane Sugar Refiners' Association. See United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 322-24 (1936); *Florsheim Shoe Co. v. United States*, No. 83-1371, slip op. at 15-16 (Fed. Cir. July 12, 1984); *L. Tribe American Constitutional Law* § 4-2, at 158-63 (1978).

A constitutional delegation of powers requires that Congress state a policy or objective for the President to execute and also that it establish a standard or "intelligible principle" that makes clear when action is proper. *Star-Kist Foods, Inc. v. United States*, 47 CCPA 52, 60, 275 F.2d 472, 480 (1959). The congressional policy expressed in Section 204 is the limitation of imports of textiles and agricultural commodities into the United States. See *American Association of Exporters & Importers*, 7 CIT at —, 583 F.Supp. at 598.

Plaintiffs also contend that the interim regulations are ultra vires. Section 204 delegates to the President authority "to issue regulations . . . to carry out . . . agreement[s]." Plaintiffs maintain that the interim regulations issued by Customs violate the MFA and the bilaterals and therefore do not "carry out" agreements.

In the absence of a contrary legislative intent, statutory terms are to be construed according to their common meaning as a matter of law. See *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 69 CCPA 128, 133, 673 F.2d 1268, 1271 (1982); *Toyota Motor Sales, U.S.A., Inc. v. United States*, 7 CIT —, 585 F. Supp. 649, 653 (1984).

The common purpose of Section 204, the MFA and the bilaterals is to limit imports of textiles. See *American Association of Exporters and Importers*, 7 CIT at —, 583 F. Supp. at 593; *Consumers Union of the United States, Inc. v. Committee for the Implementation of Textile Agreements*, No. 74-968 (D.D.C. 1975), *rev'd on jurisdictional grounds per curiam*, 561 F.2d 872 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 933 (1978). The Executive states that these interim regulations are essential to carry out that intent. Exec. Order No. 12,475, 49 Fed. Reg. 19,955 (1984).

"[C]ongressional authorizations of presidential power [in the foreign affairs area] should be given a broad construction and not 'hemmed in or 'cabined, cribbed, confined' by anxious judicial blinders.'" *Florsheim Shoe Co. v. United States*, No. 83-1371, slip op. at 16 (Fed. Cir. July 12, 1984) (quoting *South Puerto Rico Sugar*

Co. Trading Corp. v. United States, 334 F.2d 622, 632 (Ct. Cl. 1964), cert. denied, 379 U.S. 964 (1965)).

Where Congress has given the President discretion in delegating authority in international trade, the courts have uniformly sustained action taken by the Executive Branch against a claim that it has exceeded the delegated authority. See, e.g., *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 561-62 (1976); *U.S. Cane Sugar Refiners' Association v. Block*, 69 CCPA 172, 177-78, 683 F.2d 399, 404 (1982); *United States v. Yoshida International, Inc.*, 63 CCPA 15, 32-33, 526 F.2d 560, 580-81 (1975), Cf. *Luggage and Leather Goods Manufacturers of America, Inc. v. United States*, 7 CIT —, slip op. 84-53, at 30 (May 11, 1984) (President not given discretion to grant duty-free treatment under the Generalized System of Preferences to textiles "subject to" the MFA and the bilaterals).

The Court holds that the term "to carry out" confers upon the President the authority to issue these interim regulations and further holds that the President acted within the scope of the authority constitutionally given him by Congress.¹⁰

IV. The Administrative Procedure Act Review Under 5 U.S.C. § 706(2)(A)

Plaintiffs in *Mast* and *RITAC* contend that the interim regulations regarding country of origin, documentation, in-bond transportation, and warehouse manipulation should be declared void under 5 U.S.C. § 706(2)(A), which states that a court shall:

Hold unlawful and set aside agency action, findings, and conclusions found to be—

Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law . . .

Plaintiffs argue that the record before the Court insufficiently discloses the factual and analytical basis for defendants' decision to promulgate the interim regulations. But where action is committed to executive discretion, judicial review is limited. As the Court of Appeals for the Federal Circuit recently stated:

[T]he Executive's decisions in the sphere of international trade are reviewable only to determine whether the President's action falls within his delegated authority, whether the statutory language has been properly construed, and whether the President's action conforms with the relevant procedural requirements. The President's findings of fact and the motivations for his action are not subject to review. *United States v. George S. Bush & Co.*, 310 U.S. 371, 379-80 (1940); *United States Cane Sugar Refiners' Association v. Block*, 683 F.2d 399,

¹⁰ Because the Court holds as a matter of law that Section 204 delegates to the President authority to limit textile imports, facts showing that the interim regulations would result in different quotas than those negotiated by the President are immaterial, and the third cause of action in *RITAC* is therefore ripe for summary judgment.

404 (CCPA 1982); *Aimcee Wholesale Corp. v. United States*, 468 F.2d 202, 206 (CCPA 1972).

Florsheim Shoe Co. v. United States, No. 83-1371, slip op. at 22 (Fed. Cir. July 12, 1984).

After it is decided that the President has congressional authority for this action, "his motives, his reasoning, his finding of facts requiring the action, and his judgment, are immune from judicial scrutiny." *United States Cane Sugar Refiners' Association v. Block*, 69 CCPA at 177, 683 F.2d at 404; *Florsheim Shoe Co.*, No. 83-1371, slip op. at 23.

The court of appeals in *Florsheim* interpreted Section 504 of Title V of the Trade Act of 1974, 19 U.S.C. § 2646 (1982). That statute gives the President authority to "withdraw, suspend, or limit" duty-free treatment accorded under the Generalized System of Preferences after consideration of a variety of factors.

The Court of Appeals found in this statute "an explicit grant to the President of plenary authority". *Florsheim*, slip op. at 15.

Section 204 is as broad in its grant to the President of authority to negotiate with other governments "whenever he determines such action appropriate" and "to issue regulations . . . to carry out any such agreement." See *American Association of Exporters and Importers v. United States*, 7 CIT —, 583 F. Supp. 591, 598 (1984) ("Section 204 grants extraordinary discretion to the President in negotiating textile trade agreements and regulating textile importation.")

Under *Florsheim*, the Court thus may consider only whether the President failed to "properly construe" his authority under Section 204; i.e., whether the interim regulations were promulgated "not in accordance with law."¹¹

The "law" for purposes of Section 706 review does not include the MFA or bilateral agreements. A case arises under an international agreement only if the agreement confers legal rights on the plaintiffs. Many agreements that ultimately benefit individual interests do not give them justiciable legal rights. See, e.g., *Dreyfus v. Von Finck*, 534, F.2d 24, 29-30 (2d Cir.), cert. denied., 429 U.S. 835 (1976). The Court knows of now language in the MFA or bilateral agreements that would show an intent to create private rights, i.e., to make the agreements self-executing. Plaintiffs do not have a protected interest to argue that the country or origin regulations violate the terms of the MFA or the bilaterals, or are promulgated outside their framework.

Plaintiffs maintain that the country of origin rules, interim regulation § 12.130, are contrary to judicial precedent defining "substantial transformation" and in direct conflict with the court's holding in *Cardinal Glove Co. v. United States*, 4 CIT 41 (1982).

¹¹ The RITAC plaintiffs argue summary judgment cannot be granted against them on this issue, but insofar as the Court holds that *Florsheim* forbids it from considering the factual basis for the decision to promulgate the regulations, there is no material issue of fact for plaintiffs to discover.

They further contend that the interim regulations contradict the holding in *Cardinal Glove* in at least two respects. First, the interim regulations provide that assembly of fabric components into a finished garment will not in itself constitute substantial transformation; and, secondly, the interim regulations provide that the country of assembly is not to be the "country of origin" for quota or marking purposes. Plaintiffs maintain the decision in *Cardinal Glove* is contrary in both points.

Customs cannot disregard judicial precedent interpreting authority. See *FTC v. Colgate-Palmolive Co.*, 380, U.S. 374, 385 (1965). In this case, however, Customs' authority is derived from the President's power to issue regulations to implement agreements negotiated with foreign countries. There is nothing in the *Cardinal Glove* case that prevents the President from implementing this authority under Section 204 by having Customs issue regulations. (See Part III, *supra*).

Plaintiffs¹² challenge two other interim regulations as contrary to statutes: the in-bond regulation, § 18.11, 49 Fed. Reg. 31,253, and the warehouse manipulation regulation, § 144.38, 49 Fed. Reg. 31,253-54.

Interim regulation § 18.11(e)¹³ has recently been modified so that it would no longer require the production of a visa, export license or rated invoice at the port of arrival. These modifications, in the Court's view, moot plaintiffs' objections to the amendment originally embodied in interim regulation § 18.11(e).

Plaintiffs also contend that the amendment to § 144.38 which prohibits the manipulation of "textiles" in a bonded Customs warehouse conflicts with Section 562 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1562, and is therefore void.

Under interim regulation § 144.38(f), if manipulation changes (1) the country of origin; (2) the textile category; or, (3) the visa or export licensing requirements for the merchandise, it may not be withdrawn from a warehouse for consumption. Plaintiffs say precedent construes 19 U.S.C. § 1562 so that merchandise entered into a bonded warehouse is not "imported" and is not, therefore, subject to tariff regulations until withdrawn. *Marques Del Merito, Inc. v. United States*, 36 CCPA 38, 43-44, C.A.D. 394 (1948).

This does not mean, however, that 19 U.S.C. § 1562¹⁴ expressly permits the manipulations prohibited in interim regulation § 144.38(f).

¹² See Plaintiffs' brief in support of summary judgment motion in *Mast*, at 43-53.

¹³ Plaintiffs' argument, submitted before interim regulation § 18.11(e) was modified, points out that requiring visas or export licenses to be included in the entry papers and authorizing the district director to require evidence of the values and quantities stated in the entries, would result in the delay of the delivery of goods transported in bond. 19 U.S.C. § 1552 facilitates the shipment of goods, other than explosive or prohibited goods, from the port of arrival to the port of destination with "utmost expedition." *United States v. Harris & Co.*, 4 Ct. Cust. Appls. 116, 119 (1981).

¹⁴ 19 U.S.C. § 1562 provides in pertinent part: "Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the ap-

In fact, Section 1562 generally *prohibits* all manipulation of merchandise in a bonded warehouse unless expressly permitted by Customs.

The Court finds that the interim regulations are "in accordance with law" under 5 U.S.C. § 706(2)(a).

V. The Administrative Procedure Act Review under 5 U.S.C. § 553

Having decided that "the President's action falls within his delegated authority" and that "the statutory language has been properly construed" the Court must now determine whether "the President's action conforms with the relevant procedural requirements." *Florsheim*, slip op. at 22. The Court now considers plaintiffs' claim that the prior notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. § 553, were not complied with and that Customs was not within any of the section's exceptions.

A. Application

The notice of August 3 implicitly recognized the applicability of the APA.¹⁵ But at oral argument the defendants suggested that the interim regulations were not "rule making" within the APA because they were promulgated by Treasury order at the direction of the President.¹⁶

"Rule making" is defined as "agency process for formulating, amending, or repealing a rule". 5 U.S.C. § 551(5). The APA defines "agency" for the purposes of Section 553 as follows:

"Agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the the government of the District of Columbia.

5 U.S.C. § 551(1)(A)-(D)

Congress created no exception for action taken at the direction of the President. Much that the federal government does, and much of its important action, is at the direction of the President, as Chief Executive. Application of the APA would be substantially dimin-

plication of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same: *Provided, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country. . . .* *Id.* (emphasis added).

¹⁵ The notice stated:

Public notice is inapplicable to these regulations because they are promulgated pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and are thus within the foreign affairs function of the U.S. and the foreign affairs exemption of 5 U.S.C. 553(a)(1).

49 Fed. Reg. 31,251. The application of this exception is discussed at Part IV C, *infra*.

¹⁶ The interim regulations were issued by the Secretary of the Treasury, through the Customs Service, pursuant to authority delegated to the President in Executive Order 12,475.

ished if it did not apply to agency rulemaking pursuant to the President's direction.

Rulemaking power delegated to the President by Congress generally must be exercised in accordance with the APA. At oral argument the defendants conceded that the President's power to order these interim regulations is derived solely from the delegation contained in Section 204.¹⁷ If Section 553(b) has not been followed, an exception for the promulgation of these interim regulations must be found in Section 553 itself.

B. Compliance

The defendants argue that they have complied with the APA's prior notice and comment provisions by publishing Executive Order 12,475 in the Federal Register May 11, 1984. The Secretary of the Treasury with policy guidance from CITA, was ordered to draft interim regulations relating to, *inter alia*, country of origin. The order cited authority for the rulemaking, and described "the subjects and issues involved" as required by 5 U.S.C. § 553(b) (2) and (3). The order failed to give the time and place of "the public rule making proceedings" as required by § 553(b)(1). The Court will not construe this order from the President to his subordinates as notice that Customs will conduct public proceedings on proposed country of origin and documentation rules. See *National Tax Brokers Associations v. United States*, 591 F.2d 896 (D.C. Cir. 1978) (agency notice of formulation of possible legislation published in Federal Register held inadequate under the APA because it was published for purpose other than notice of proposed rulemaking).

The failure to provide the time and place is not merely a technical omission. The "principal purpose" of the notice and comment provisions of the APA was "to provide that the legislative functions of administrative agencies shall as far as possible be exercised only upon public participation on notice . . ." *Administrative Procedure Act: Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 191 (1947) (*Legislative History*).

Participation by interested parties ensures that agencies' decisions are based upon relevant information, See *Texaco, Inc. v. Federal Power Commission*, 412 F.2d 740, 744 (3d Cir. 1969), and fairly responsive to the interests and needs of the regulated, See *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 764 (1969); *City of Waco v. EPA*, 620 F.2d 84, 96 n.8 (5th Cir. 1980). Requiring that the time, place, and nature of the rulemaking be published, serves to inform the public when and where comments should be submitted.

The discussion of government officials with some interested parties does not cure the failure to provide *general* notice required by

¹⁷ The Constitution, art. I, § 8, cls. 1, 3 establishes "the complete power of Congress over foreign commerce and its authority to prohibit the introduction of foreign articles." *Weber v. Freed*, 239 U.S. 325, 329 (1915); *Buttfield v. Stranahan*, 192 U.S. 470, 492-93 (1904). The President's inherent authority in foreign affairs does not include the power to regulate imports. See *United States v. Yoshida Int'l, Inc.*, 63 CCPA 15, 22, 526 F.2d 560, 572 (1975).

Section 553(b). The intent of the APA is to give the public a reasonable opportunity to comment on interim regulations before they take effect. See *Wagner Electric Corp. v. Volpe*, 466 F.2d 1013, 1019 (3d Cir. 1972) (submission of comments by four interested parties does not remedy the inadequacies of the notice of proposed rule-making).

The Court finds that Customs did not provide prior notice and opportunity to comment. The Court must now consider whether Customs was within one of the exceptions of Section 553(b).

C. The "General Statements of Policy" Exception

The defendants contend that interim regulation § 18.11(e) is within the 5 U.S.C. § 553(b)(A) exemption of "general statements of policy" and should be exempt from the prior notice and comment provisions of the APA.

The Court agrees and finds interim regulations §§ 6.18(d),¹⁸ 141.52 and 143.22 also exempt from prior notice and comment.

Where an "administrator [is] free to exercise his informed discretion in situations that arise" the rule is a general statement of policy which, as such, is exempt from the APA's prior notice and comment policy. *Guardian Federal Saving & Loan Association v. Federal Savings & Loan Insurance Corp.*, 589 F.2d 658, 666 (D.C. Cir. 1978).

A rule is a general statement when it "does not establish a 'binding norm.' It is not finally determinative of the issues or rights to which it is addressed." *Pacific Gas & Electric Co. v. Federal Power Commission*, 506 F.2d 33, 38 (D.C. Cir. 1974).

Interim regulation § 18.11(e) as promulgated in the August 3rd notice provided that textiles entered for in-bound transportation would not be approved without documentation describing the merchandise in sufficient detail to allow an estimation of the duties due and the correctness of the values or quantities on the entry (e.g., a rated invoice). This interim regulation was amended by notice published in the Federal Register September 28, 1984. Interim regulation § 18.11(e) as amended, now states that "the district director may, if he deem necessary, require the following [specific] evidence," (emphasis added). In the opinion of the Court, interim regulation § 18.11(e), as amended, is discretionary and is exempt from the prior notice and comment provisions of APA under section 553(b)(A).

Interim regulation § 141.52 merely adds "import admissibility enforcement efforts" to the list of grounds of potential prejudice the district director can consider. Interim regulation § 143.22 adds the "import admissibility enforcement purposes" and "the efficient conduct of Customs business" to the district director's considerations

¹⁸ Interim regulation § 6.18(d) provides that documentation required pursuant to § 18.11(e) must accompany transit manifest sheets accompanying air cargo shipments.

in exercising his discretion of whether to require a formal consumption or appraisal entry for merchandise.

These amendments are nothing more than "general statement[s] of policy," *Guardian Federal*, 589 F.2d at 666, where the administrator is free to exercise his informed discretion in situations that arise. The Court holds that interim regulations § 18.11(e), § 141.52, and § 143.22 are within the "interpretive rules, general statements of policy" exception of 5 U.S.C. § 553(b)(A).

D. The "Foreign Affairs Function" Exception

The August 3, 1984 notice stated that the interim regulations are "within the foreign affairs function of the U.S. and the foreign affairs exemption of 5 U.S.C. 553(a)(1)." 49 Fed. Reg. 31,251. Section 553(a)(1) exempts from notice and comment, rulemaking "to the extent that there is involved a military or foreign affairs function of the United States".¹⁹

The defendants argue that executive action taken under Section 204 is always within the foreign affairs exception and that the interim regulations are inextricably intertwined with the MFA and the bilateral agreements in that the regulations are necessary to prevent their circumvention.

Plaintiffs would construe the exemption more narrowly, reading the legislative history of section 553(a)(1) to require application of the exemption only to diplomatic activities or where public notice and comment would clearly provoke undesirable international consequences.

The meaning of foreign affairs function is hardly clear. Cases construing the "foreign affairs function" exemption and the legislative history offer little guidance to the meaning of the term. The only court to have considered the applicability of the APA to actions taken under Section 204, *Consumers Union of the United States, Inc. v. Committee for the Implementation of Textile Agreements*, No. 74-968 (D.D.C. 1975) *rev'd on jurisdictional grounds per curiam*, 561 F.2d 872 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 933 (1978), found, without analysis, CITA's determination of the need to impose unilateral restraints on imports of textiles under the MFA within the "foreign affairs" exception. Slip op. at 15. There the challenged Executive action involved negotiation with other countries of import restrictions on textiles, not promulgation of Customs interim regulations.

¹⁹ In its briefs the defendants also contend that the interim regulations are within the "good cause" exception of 5 U.S.C. § 553(b)(B), which provides that the prior notice and comment provisions do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest." The Court need not decide the question in view of its determination that the interim regulations which are not "general statements of policy" or "interpretive rules" are within the "foreign affairs function" exception. The defendants' prior argument that it complied with the notice provision of § 553(b) has not deterred them from taking the position that it did not comply since compliance would have been "impractical, unnecessary, or contrary to the public interest".

Other cases interpreting the exception also fail to provide an analytical framework. See, e.g., *Malek-Marzban v. INS*, 653 F.2d 113, 116 (4th Cir. 1981) ("obvious" that the President exercised a "foreign affairs function" in directing the Immigration and Naturalization Service to act against Iranian nationals during the Iranian hostage crisis).

The legislative history of this subsection is also not definitive. Both the Senate and House Reports on the APA state:

The phrase "foreign affairs functions" used here and in some other provisions of the bill, is not to be loosely interpreted to mean any function extending beyond the borders of the United States, but only those "affairs" which so affect relations with other governments that, for example, public rulemaking provisions would clearly provoke definitely undesirable international consequences.

Legislative History at 199, 257. The exception cannot apply to functions merely because they have impact beyond the borders of the United States. "In our complex world there are very few purely internal affairs," *Briehl v. Dulles*, 248 F.2d 561, 591 (D.C. Cir. 1957). But the phrase "clearly provoke definitely undesirable international consequences" appears illustrative. A finding of these consequences has not been considered necessary by courts²⁰ and a requirement of such a finding would render the "military or foreign affairs function" superfluous since the "good cause" exception, § 553(b)(B), would apply.

The defendants contend that since Section 204 permits the President to negotiate with other nations to limit textile imports, any regulation promulgated thereunder, even if only remotely relating to foreign affairs, is within the "foreign affairs function" exception. The court disagrees. The legislative history demonstrates that it is the function of the regulations that is determinative, and not the source of the authority invoked. The report of the Senate Committee on the Judiciary on the bill that was to become the APA stated that the proposed legislation.

Has avoided the mistake of attempting to oversimplify the measure. It has therefore not hesitated to state functional classifications and exceptions where those could be rested upon firm grounds. In doing so, it has been the undeviating policy to deal with these types of functions as such and in no case with administrative agencies by name. Thus certain war and defense functions are exempted, but not the War or Navy Departments in the performance of their other functions.

²⁰ *Nademi v. INS*, 679 F.2d 811, 814 (10th Cir. 1982); *Malek-Marzban v. INS*, 653 F.2d 113, 116 (4th Cir. 1981); *Narenji v. Civiletti*, 617 F.2d 745, 748 (D.C. Cir. 1979); *Hotel & Restaurant Employees Union v. Smith*, 563 F.Supp. 157, 162 (D.D.C. 1983); *Akbari v. Godshall*, 524 F.Supp. 635, 644 (D. Colo. 1981); *Hou Ching Chow v. Attorney General*, 362 F.Supp. 1288, 1290-91 (D.D.C. 1973). But see *Jean v. Nelson*, 711 F.2d 1455, 1477-78 (11th Cir. 1983); *Yassini v. Croeland*, 618 F.2d 1356, 1360 (9th Cir. 1980). The Court finds the latter case distinguishable in that the regulations did not implement any agreement between the U.S. and Haiti limiting immigration into the U.S.

Legislative History, at 191.

If the defendants' interpretation of the exemption were accepted, all Customs' regulations of the entry of textiles pursuant to Section 204 would be exempt from the APA's rulemaking requirements even if entirely domestic in impact.²¹ Cf. *Yassini v. Crosland*, 618 F.2d at 1360 n.4 ("foreign affairs function" exception "would become distended if applied to INS actions generally, even though immigration matters typically implicate foreign affairs").

The plaintiffs' argument that "foreign affairs functions" should be limited to diplomatic activities is not acceptable. The *Attorney General's Manual on the Administrative Procedure Act* (1947), "a contemporaneous interpretation [of the APA] previously given some deference by [the Supreme] Court because of the role played by the Department of Justice in drafting the legislation," *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 546 (1978) (footnote omitted) states that it is "clear that the 'foreign affairs' exemption is not limited to strictly diplomatic functions, because the phrase 'diplomatic function' was employed in the January 6, 1945 draft of the [APA] and was discarded in favor of the broader and more generic phrase 'foreign affairs function.'"

However defined, the exception applies "only 'to the extent' that the excepted subject matter is clearly and directly involved" in a "foreign affairs function". Legislative History at 275 (House Report). The courts in analyzing the section 553 exemptions, have continually stated that any claims of exemption from rulemaking procedures will be construed narrowly and granted reluctantly. See, e.g., *Environmental Defense Fund v. Gorsuch*, 713 F.2d 802, 816 (D.C. Cir. 1983); *United States Steel Corp. v. EPA*, 595 F.2d 207, 214, modified on rehearing, 598 F.2d 915 (5th Cir. 1979); .

The question the Court must consider is whether the remaining interim regulations issued by Customs are "clearly and directly" involved "in a foreign affairs function." Each of them have a common purpose: prevention of the entry of textile products into the United States on quotas not applied to the country which manufactured all or a substantial part of the textile products.

Accordingly, interim regulation § 12.130 defines country of origin and establishes criteria for substantial transformation in order to prevent nearly completed textile products of one country from

²¹ Customs responded to a survey by the Administrative Conference of the United States in 1969 by explicitly stating that none of its regulations were subject to the "foreign affairs function" exception. (Memorandum from commissioner of Customs to General Counsel, Department of Treasury, June 30, 1969, responding to survey.) The Department of the Treasury did state in response to a 1957 survey by the Committee on Government Operations of the House of Representatives that "foreign affairs functions" were conducted by Customs. *Survey and Study of Administrative Organization, Procedure and Practice in Administrative Agencies, House Committee on Government Operations*, 85 Cong., 1st Sess. 1064 (1957). Congress has been informed that at least portions of the textile import program have been considered subject to the foreign affairs exemption. See *Hearings on S. 518, Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary*, 90th Cong. 1st Sess. 373 (1967) (*Hearings on S. 518*) (Commerce Department testified as the need for secrecy in negotiation and administration of agreements); *Hearings on S. 518 at 241*, (Labor Department testified that compliance could stimulate imports later subject to ceiling limits.)

being imported into the United States on the quota of another country.²²

Similarly, interim regulations §§ 144.38(f), 146.49 and 19.11 concern the withdrawal from a bonded warehouse or the transfer from a foreign trade zone of textile products subject to visa or license requirements if, while in the warehouse or foreign trade zone, they were changed so as to alter their country of origin, their textile quota category, or to exempt them from visa or export license requirements.

Finally, interim regulation § 12.131 requires formal entry for shipments of textile products subject to visa or export license requirements arriving for one consignee on the same conveyance on the same day, when the combined value is over \$250. This regulation prevents the splitting of shipments to avoid quota restraints.

The defendants contend that the interim regulations are necessary to carry out and prevent the circumvention and frustration of the bilaterals by including textile products, now escaping from quota provisions, in a country's quota. The plaintiffs argue that the interim regulations violate existing textile agreements.

The negotiation of agreements with foreign governments under Section 204 does "clearly and directly" involve a "foreign affairs function." When the President defines, modifies or even violates the terms of an international agreement, or directs his subordinates to do so, that action is "clearly and directly" involved within the "foreign affairs function."²³ In this case, Customs has issued these interim regulations pursuant to Presidential direction.

The Court holds that to the extent that the interim regulations define or alter quantitative limitations in bilateral trade agreements or unilaterally imposed restrictions on textile imports, they "clearly and directly" involve a "foreign affairs function" and are exempt from the prior notice and comment provisions of the APA.

The interim regulations go directly to the purpose of the trade agreements, i.e., the limitation of textiles imported into the United States. With the promulgation of these interim regulations, textile products that would have avoided inclusion in a given country's quota now will be counted, thereby decreasing the quantity eligible for direct export to the United States or through another country's quota.

The Court finds that interim regulations §§ 12.130; 144.38(f); 146.49; 19.11 and 12.131 are exempt from the prior notice and com-

²² Interim regulation § 12.130 also requires documentation to accompany the entry. These requirements are necessary procedures that show there has been compliance with the new country of origin provisions.

²³ Article 8(1) of the MFA, negotiated by the President under this authority, provides that the "participating countries agree to avoid circumvention of this Arrangement by trans-shipment, rerouting, or action by non-participants." It may be argued, as plaintiffs do, that the President has chosen not to comply with the consultative mechanisms established under the MFA and the General Agreement on Tariff and Trade in promulgating the interim regulations. But that argument concedes that the President's acts affect the foreign relations of the United States. Violation of an international commitment, whether by the President or by the Congress—and the Court explicitly makes no such holding—is no less a "foreign affairs function" than the negotiation of such a commitment. See *Goldwater v. Carter*, 617 F.2d 697, 706 (D.C. Cir.) (per curiam), *vacated and remanded*, 444 U.S. 996 (1979).

ment provision of section 553(a)(1) and are exempt from all the requirements of section 553.

CONCLUSION

The President acted within the scope of the authority constitutionally delegated to him by Congress in issuing these interim regulations. The regulations are in accordance with the law. Furthermore, the interim regulations are not subject to prior notice and comment provisions of the APA since they come within the "foreign affairs function" or "general statement of policy" exceptions.

Accordingly, it is hereby ordered that defendants' motion for summary judgment is granted.

(Slip Op. 84-112)

AUDIOVOX CORP., PLAINTIFF, *v.* THE UNITED STATES, DEFENDANT

Court No. 82-5-00652

Before: DiCARLO, *Judge*.

MEMORANDUM OPINION AND ORDER

Plaintiff cannot validly protest the refusal of Customs to grant merchandise duty-free treatment under the Generalized System of Preferences (GSP) on reliquidation where plaintiff failed to make such a claim in its protests of the liquidations.

Plaintiff's protests of the liquidations requesting that the merchandise be reliquidated at 5.5% *ad valorem* or 6% *ad valorem* did not indicate intent to request GSP treatment.

[Judgment for defendant.]

(Decided October 10, 1984)

Mandel and Grunfeld (Steven P. Florsheim and Robert B. Silverman), for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Handler-Menahem*), for the defendant.

DiCARLO, *Judge*: Plaintiff made sixty entries of FM Micro Converter Radios from June to December, 1978, and a further entry, No. 627164, in August, 1979. Before each entry GSP Certificates of Origin (Forms A) were executed by an appropriate certifying authority in the country of export, the Republic of China (Taiwan). The merchandise entered in 1978 was liquidated in January and April, 1979, at 10.4% *ad valorem* under item 685.21, Tariff Schedules of the United States (TSUS), a classification under which GSP treatment was not available. Plaintiff filed timely protests of these liquidations, requesting reliquidation under item 685.29 at 6% *ad valorem* or item 688.40 at 5.5% *ad valorem*. Although merchandise

imported from Taiwan and classifiable under item 685.29 was accorded duty-free treatment under the GSP, plaintiff failed to request duty-free treatment in its protests, and plaintiff did not file the previously executed Forms A.

Entry No. 627164 was liquidated in October, 1979. It also was liquidated by Customs under item 685.21 at 10.4% *ad valorem*. In its protest of the liquidation of entry No. 627164 plaintiff requested reliquidation free of duty under item 685.29 pursuant to the GSP and filed a Form A.

All of plaintiff's protests were granted, and on June 8, 1981 all the entries were reliquidated at 6% *ad valorem* under item 685.29, TSUS,¹ except entry No. 627164, which was reliquidated under item 685.29 duty free pursuant to the GSP.

On August 24, 1981 plaintiff filed protests against all sixty-one reliquidations, requesting that the entries be liquidated for a third time, free of duty under item 685.29, TSUS, and the GSP. With these protests plaintiff filed the Forms A executed two and a half to three years earlier. These protests against the reliquidations were denied in November and December, 1981. Suit was timely filed in this Court on May 11, 1982. The United States now moves to dismiss the action.

Respecting entry No. 627164, the Government argues that since plaintiff was granted reliquidation free of duty as requested in its protest against the liquidation, there is no claim upon which relief can be granted. Plaintiff concedes that there is no case or controversy with respect to this entry, and that the case should be dismissed with respect to this entry. It is so ordered.

The Government contends that the Court is without jurisdiction to review the denial of plaintiff's protests concerning the reliquidations of the sixty 1978 entries at 6% *ad valorem* because 19 U.S.C. § 1514(d)² and 19 C.F.R. § 174.16³ prohibit the protest of a question outside the scope of a reliquidation and § 1514 (c)(1)⁴ prohibits the filing of more than one protest for each category of merchandise. *F.W. Woolworth Co. v. United States*, 26 CCPA 157, C.A.D. 10 (1938); *Dover Shipping Co., Ltd. v. United States*, 4 Cust. Ct. 135, C.D. 306 (1940); *Pistorino & Co., Inc. v. United States*, 71 Cust. Ct. 166, C.D. 4491 (1973); *Ataka America, Inc. v. United States*, 79 Cust. Ct. 135, C.D. 4724 (1977).

Plaintiff's contentions are (1) that it did request GSP treatment in its protests of the liquidations, that Customs did not grant the

¹ On January 29, 1981, following trial in this Court, five other entries of the same merchandise by the same importer classified by Customs under item 685.21 were ordered reliquidated under item 685.29 *Audioux Corp. v. United States*, 1 CIT 136 (1981) (Newman, J.). Plaintiff's protests of the liquidations of the entries at issue here were "suspended" by Customs pending decision in that case.

² 19 U.S.C. § 1514(d) provides: "The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the customs officer upon any question not involved in such reliquidation."

³ Similarly, 19 C.F.R. § 174.16 states: "A protest shall not be filed against the decision of the district director or reliquidation upon any question not involved in the reliquidation."

⁴ Section 1514(c)(1) states, in part: "Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate rate protest may be filed for each category."

requests, and that plaintiff now protests only the refusal of Customs to grant it duty-free treatment on reliquidation, and (2) that it was unnecessary to request GSP treatment when plaintiff filed its original protests, and plaintiff could validly request GSP treatment within ninety days of the reliquidations.⁵

Plaintiff strains to find language in its original protests concerning the sixty 1978 entries indicating an intent to request for GSP treatment. In seeking relief under items 685.29 and 688.40, plaintiff asserts that it sought all appropriate relief, including GSP treatment, should the merchandise be classified under item 685.29. Thus, plaintiff notes that its protests of the liquidations stated, in relevant part, that it protested Customs "... decision, liquidation and assessment of duties charged at 10.4% under TSUS item 685.21 ... [A]s to the classification and rate and amount of duties, it is claimed that the proper Classification is under TSUS item 685.29 at the rate of 6% or 688.40 at the rate of 5.5% [Emphasis added]" (Plaintiff's Memorandum at 3).

But, none of these protests can be fairly read to claim duty free treatment.⁶ Plaintiff explicitly requested reliquidation at either 6% or 5.5% *ad valorem*. Where GSP treatment was expressly requested, in the protest of the liquidation in entry No. 627164, it was granted. That plaintiff did not intend to request dutyfree treatment pursuant to the GSP in his protests of the liquidations is further demonstrated by his failure to file Forms A until after the reliquidations. The Forms A must be filed to support an importer's claim for GSP treatment, 19 C.F.R. § 10.173, and a GSP claim may be allowed only if the district director is satisfied that this requirement has been fulfilled. 19 C.F.R. § 10.172. The district director thus *could not* have granted plaintiff GSP treatment under plaintiff's

⁵ The Court notes that on a motion to dismiss, the allegations of the complaint must be accepted as true and the motion must be denied if the pleadings raise any issue of fact against the moving party. "It must appear to a certainty that the opposing party is entitled to no relief under a state of facts that could be approved in support of its claim or allegations." *C.J. Tower & Sons v. United States*, 68 Cust. Ct. 377, 379, C.R.D. 72-11 (1972); See *Hishon v. King & Spaulding* — U.S. —, 184 S.Ct. 2229, 81 L.Ed. 2d 56, (1984); *Suwannee Steamship Co. v. United States*, 79 Cust. Ct. 19, 21 C.D. 4708, 435 F. Supp. 389, 390 (1977).

The administrative record before the Court consists of 61 packets of documents transmitted by Customs pursuant to 28 U.S.C. § 2635(a)(1). Certificates of Origin (Forms A) and the protests of the liquidations, distinct from the protests at issue here, for each entry are included in these packets. Though the Forms A and protests of the liquidations are not within the § 2635(a)(1) list of documents, § 2635(a)(1) is not exclusive and where documents are "of the same character as those enumerated there," *American Motorists Insurance Co. v. United States*, 5 CIT —, Slip Op. 83-8 (Feb. 1, 1983), the Court will consider them part of the official record of the administrative determination. *American Motorists Insurance Co., supra*.

⁶ 19 U.S.C. § 1514(b) requires that protests "shall . . . set forth distinctly and specifically . . . the nature of each objection and the reasons therefor." As the Supreme Court observed:

... the object of the requirement [that protests distinctly and specifically state objections] is to prevent a party, if he suffers the mistake or oversight to pass without notice, from taking advantage of it when it is too late to make the correction, and to compel him to disclose the grounds of his objection at the time when he makes his protest.

... Technical precision is not required; but the objections must be so distinct and specific, as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated.

Davis v. Arthur, 96 U.S. 148, 151 (1878) as quoted in *American Mail Line, Ltd. v. United States*, 34 CCPA 1, 6, 4C.A.D. 335 (1946); See also *United States v. Sheldon and Co.*, 5 CCPA 427 T.D. 34946 (1914).

The Court holds as a matter of law that plaintiff's protests of the liquidations cannot be "fairly construed" to have sufficiently and distinctly informed Customs that plaintiff sought duty-free treatment.

original protests as plaintiff failed to satisfy a condition precedent to such treatment.

Plaintiff's reliance on *Sanyo Electric, Inc. v. United States*, 81 Cust. Ct. 114, 115, C.D. 4775 (1978) is misplaced. Consistent with 19 U.S.C. § 1514(c)(1), *Sanyo* holds merely that where alternative claims are made in a protest and one of the claims is granted, jurisdiction will not lie in this Court as the protest is not "denied" within the meaning of 28 U.S.C. § 1582(a) (superceded by the current 28 U.S.C. § 1581(a) November 1, 1980).

Dicta in that case, counseling the importer to raise the alternative claim by filing a new protest, does not support plaintiff's position here as plaintiff made no claim for GSP treatment in its original protests. To allow an importer to raise a claim in the protest of a reliquidation not raised in the protest to the liquidation, and which could have been raised there, would drain 19 U.S.C. §§ 1514(c)(1) and (d) of all meaning. The number of possible protests of a single entry would be limited only by the importer's imagination; an endless series of "reliquidations" could result.

Plaintiff's second argument is that it could validly request duty-free treatment under the GSP in its protest of the reliquidations, and cites 19 C.F.R. § 10.112, which provides, in pertinent part, that the appropriate duty-free document "may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final."

But the requirements of 19 U.S.C. § 1514 are conditions precedent for jurisdiction in this Court under 28 U.S.C. § 1581(a), *Lowa, Ltd. v. United States*, 724 F.2d 121, (Fed. Cir. 1984) ("The judgment appealed from is affirmed on the basis of the opinion filed by the CIT. *Lowa, Ltd. v. United States*, 561 F.Supp. 441 (C.I.T. 1983)"); *Wally Packaging Inc. v. United States*, 7 CIT —, 578 F. Supp. 1408, 1411-12 (1984), and the Court may not construe 19 C.F.R. § 10.112 to increase its jurisdiction,⁷ *Ataka America, Inc., supra*. As plaintiff failed to timely request duty-free treatment, the Court is without jurisdiction⁸ under 28 U.S.C. § 1581(a). Since plaintiff did not act diligently to pursue and exhaust its administrative remedies under 19 U.S.C. § 1514, the Court will not exercise its subject matter jurisdiction under § 1581(i) See *United States v. Uniroyal, Inc.*, 69 CCPA 1979, 182, 687 F.2d 467, 471 (1982) ("Congress did not intend the Court of International Trade to have jurisdiction over appeals concerning completed transactions when the appellant had failed to utilize an avenue for effective protest before the Customs

⁷ The Court finds no cases where 19 C.F.R. § 10.112 has been interpreted to allow an importer to receive duty-free treatment where it failed to timely request such treatment in its protest. See *Harwood Manufacturing Co. v. United States*, 7 CIT —, Slip. Op. 84-57 (May 30, 1984) (plaintiff failed to present Forms A until trial but timely requested GSP treatment in its protest); *Mattel, Inc. v. United States*, 67 CCPA 74, C.A.D. 1248, 624 F.2d 1076 (1980); *Green Giant Co. v. United States*, 79 Cust. Ct. 61, C.D. 4715 (1977); *F.W. Myers & Co., Inc. v. United States*, 70 Cust. Ct. 202, C.D. 4431, 360 F.Supp. 429, appeal dismissed 61 CCPA 121 (1973); *Freres, Inc. v. United States*, 47 CUST. Ct. 155, 159, C.D. 2296 (1961).

⁸ Were the Court to allow this second protest, 19 U.S.C. § 1514(c)(1) would be circumvented. This subsection provides that an amendment to a protest may only be made "prior to the expiration of the time in which such protest could have been filed," ninety days from the date of liquidation.

Service"). Section 1581(i) may be invoked as a basis for subject matter jurisdiction when no other remedy is available under § 1581(a), or the remedy available is manifestly inadequate.

The action is dismissed. Judgment will be entered accordingly.

ERRATUM

Protest abstracts of the United States Court of International Trade numbered P84/367 through P84/392, dated August 16, 1984 through October 2, 1984, should read P84/267 through P84/292.

Decisions of the Court of International Trade

Abstracts

Abstracted Periodicals

The following abstracts of decisions of the United States Court of International Trade are published for the information and guidance of office. Decisions are not of sufficient general interest to print in full. They are published to Customs officials in easily locating cases and tracing.

the United States International Trade

Abstract

and Protest Decision

DEPARTMENT OF THE TREASURY, *September 11, 1984.*

United States Court of International Trade at New York are officers of the Customs and others concerned. Although the print in full, the summary herein given will be of assistance facing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	A
				Item
P84/293	Watson, J. October 3, 1984	S. Ebisuzaki, Inc.	81-2-00188	Item 17.
P84/294	Rao, J. October 9, 1984	Semperit of America, Inc.	80-12-00087	Item 159
P84/295	Rao, J. October 9, 1984	Semperit of America, Inc.	80-12-00089	Item 159
P84/296	Rao, J. October 9, 1984	Semperit of America, Inc.	82-1-00069	Item 159 Item 309 per
P84/297	Rao, J. October 9, 1984	Zayre Corp.	82-9-01352	Item 14. Item 1
P84/298	Re, C.J. October 10, 1984	Charles Scribners & Sons	80-12-00124	Item 9.3
P84/299	Re, C.J. October 10, 1984	Charles Scribners & Sons	80-12-00172	Item 9.3
P84/300	Re, C.J. October 10, 1984	Charles Scribners & Sons	83-1-00049	Item 7.8
P84/301	Re, C.J. October 10, 1984	Charles Scribners & Sons	83-2-00281	Item 7.8

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
Item No. and Rate	Item No. and Rate		
Item 309.06 17.5%	Item 731.44 12.5%	Agreed statement of facts	Honolulu Monofilament fishing line
Item 359.10 15%	Item 359.60 8.5%	Agreed statement of facts	New York Cloth inserted sheeting
Item 359.10 15%	Item 359.60 8.5%	Agreed statement of facts	Chicago Cloth inserted sheeting
Item 359.10 15%	Item 359.60 8.5%	Agreed statement of facts	New York Cloth inserted sheeting
Item 359.50 30% plus 25¢ per lb.			
Item 737.95 14.9%	Item 737.95 Free of duty pursuant to Generalized System of Preferences	Agreed statement of facts	Chicago Die cast metal cars; products of eligible beneficiary coun- try
Item 737.15 15.1%			
Item 256.56 9.3%	Item 274.10 5¢ per lb.	Charles Scribners & Sons, S.O. 83-98	New York Calendars
Item 256.56 9.3%	Item 274.10 5¢ per lb.	Charles Scribners & Sons, S.O. 83-98	New York Calendars
Item 256.56 7.8%	Item 274.10 3.5¢ per lb.	Charles Scribners & Sons, S.O. 83-98	Norfolk Calendars
Item 256.56 7.8%	Item 274.10 3.5¢ per lb.	Charles Scribners & Sons, S.O. 83-98	Norfolk Calendars

P84/302

Reo, J.
October 10,
1984

Corning Glass Works

83-6-00839
83-8-01170

Item 52
6.9%,
6.2%

Item 522.91 6.9%, 6.5%, and 6.2%	Item 422.80 4.7%, 4.5%, and 4.4%	Agreed statement of facts	Baltimore Baddeleyite
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Decisions of the Court of International Trade

*Abstracts of
Abstracted Reappraisals*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/898	Re, C.J. October 9, 1984	Japan Food Corp.	74-11-03039	Export value
R84/899	Watson, J. October 9, 1984	Ideal Trading Co.	R64/6872	Export value

the United States International Trade

Abstracts

Appraisement Decisions

BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	Unit invoice values without addition for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	San Francisco Not stated
value	F.o.b. invoice unit prices as shown on the entry documents, plus 20% of difference between f.o.b. unit invoice prices and appraised values, net packed	Agreed statement of facts	San Francisco Radios

Appeals to the U.S. Court of Appeals for the Federal Circuit

- 85-510 Inter-Pacific Corp. *v.* United States, Court No. 77-1-00044—FOOTWEAR—Appeal from Slip Op. 84-97, filed on September 25, 1984.
- 85-532 UST, Inc. & Tsubakimoto Chain Co. *v.* United States—ROLLER CHAIN OTHER THAN BICYCLE—Appeal from Slip Op. 84-91, filed on September 27, 1984.
- 85-534—Maple Leaf Fish Co. *v.* United States—BATTERED FROZEN MUSHROOMS—TSUS—Appeal from Slip Op. 84-88, filed October 1, 1984

Decision of U.S. Court of Appeals for the Federal Circuit

- 84-774—Al Tech Specialty Steel Corp. *v.* United States—STAINLESS STEEL RODS FROM FRANCE—Appeal from Slip Op. 83-119, filed on January 13, 1984, decided on October 3, 1984: Affirmed.
- 84-1298—Vivitar Corp. *v.* United States—GREY MARKET GOODS/IMPORT RESTRICTIONS—Appeal from Order dated April 5, 1984 and subsequent Slip Op. 84-36, filed June 4, 1984.
- Voluntarily Dismissed by appellant:
Order dated September 5, 1984;
Mandate dated September 14, 1984;
Received, USCIT on October 4, 1984.



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